

## REVISITING THE LEGAL FRAMEWORK FOR AFRICAN ECONOMIC AND MONETARY INTEGRATION: LESSONS FROM EUROPEAN ECONOMIC DEPRESSION

Ikechukwu Bernard Okafor.\*

### **ABSTRACT**

*The desire for an African economic and monetary union as a strategy for repositioning the post-colonial continent for global competitiveness has been on for many decades. What initially started as a political movement for independence quickly transformed into an agenda for economic and monetary integration of the continent, drawing inspiration from the European Economic and Monetary Union. The implementation of this agenda has engaged the attention of state actors within the continent especially with the adoption of the various strategic plans of action and the treaty-frameworks for its realization. Notwithstanding the near utopian nature of this lofty dream (considering the herculean odds against its realization) a glimmer of hope was shown in the early 2000s after the transformation of the Organization of African Unity (OAU) into the African Union (AU) with new promise that it is not going to be business as usual. The upward-looking economies of some of the major countries in the continent, deepening of democratic culture and other international economic reforms in the region at the time like the debt cancelations all lent support to this new hope. With the recent global economic recession the world economic outlook has substantially changed, necessitating global reforms at various levels of economic cooperation. The African continent however seems not to have seen the need for a holistic reappraisal of its internal mechanisms for realizing a viable economic and monetary union in the light of the present realities.*

*The thesis of this paper is that apart from other problems facing this up-hill task there are fundamental weaknesses in the legal framework for the regional integration agenda which requires urgent attention if the continent is to realize this dream. The effect of the present economic depression in Europe and the strain it has placed on the economic and monetary union presents a rare example for the African continent to seek a stronger, more transparent and effective legal framework for its economic integration in order not to deliver the continent to the world as an irredeemable liability in the near future.*

### **1. INTRODUCTION**

The birth of industrialization over two hundred years ago gave a new impetus to the quest for economic prosperity of both individuals and the states within which their economic activities are organized.<sup>1</sup> Economic relations throughout the world have gone through different stages of emancipation using one theory or the other to validate the prevailing economic practices at each period. One thing that is constant in all these is the increasing quest for economic prosperity of various stakeholders. From the initial protectionist approach<sup>2</sup> to a gradual trade

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\* Lecturer, College of Law, Afe Babalola University, Ado Ekiti, Ekiti State, Nigeria. K.M 8.5, Afe Babalola Way, Ado Ekiti. Tel. 2348034415602. Email: ikeokafor1@yahoo.com; Ikechukwu.b@gmail.com.

<sup>1</sup> Note that the initial unbridled quest for economic prosperity of nations and individuals is gradually, though slowly giving way to a more cautious economic development within a sustainable environment. It is however not the focus of this work to carry out a study on the impact of economic development on the environment. For more study on this please see The World Commission on Environment and Development. (1987) *Our Common Future*, Oxford: Oxford University Press.

<sup>2</sup> See Lowenfeld, A.L. (2003). *International Economic Law*. Oxford: Oxford University Press. P. 23.

liberalization driven by the economic theory of “market economy”<sup>3</sup> larger markets are now being formed through regional economic integration<sup>4</sup>. There is an increasing emphasis (at least until recently) on formation of regional economic blocs through these organizations to carry out some economic functions, which were previously within the domain of individual states.<sup>5</sup>

While economic integration does not have a single generally acceptable definition and while these economic organizations do not have identical economic objectives there is a common trend in the modern economic integration processes around the world. That is, a general shift from the creation of Free Trade Areas (FTAs) to a more centrally organized Economic and Monetary Policy formation within a Custom Union<sup>6</sup>. While a monetary union is not coterminous with economic integration<sup>7</sup> it is seen as a further advancement of an economic integration process and has been described as the bedrock of economic integration<sup>8</sup>. Also, while it is not

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<sup>3</sup> The theory of trade liberalisation and its appeal to modern economists can be traced to Adam Smith and his analysis of comparative advantage: Smith, A. *The Wealth of Nations*, New York: Bantam Books, 2003 (first published 1776). Pp 537 – 627. Although there have been arguments that there are no absolute market economy driven by only forces of demand and supply without the influence of the state. See Soludo, CC & Ogbu, O., *The Politics of Trade Policy in Africa. The Politics of Trade and Industrial Policy in Africa – a forced consensus?* IDRC Books. Retrieved 03: 01: 2009, from [www.idrc-ca/en/ev-71251-201-1-Do\\_Topic.html](http://www.idrc-ca/en/ev-71251-201-1-Do_Topic.html).

<sup>4</sup> United Nations Economic Commission for Africa has noted that Changes in the world trading regime are a major driver of Africa’s regional integration agenda. The global trading system has evolved significantly in the last 20 years, with the general consensus that free trade is good for growth. *The General Agreement on*

*Tariffs and Trade*, created more than 50 years ago, transformed into the World Trade Organization (WTO), which has significantly reduced tariff and nontariff barriers. Rich economies now pursue bilateral trade liberalization with poor ones. The changes have resulted in greater integration of world markets and increased world trade. Since the Uruguay Round of trade negotiations in 1995 world trade increased 25%, twice

as fast as production. This rapid expansion has been facilitated by developments in information and communication technology, liberalization of financial markets, and factor movements across national and regional borders. Countries’ and regions’ responses to these new opportunities has to some degree determined their share of the benefits. UNECA. (2007). *Assessing Regional Integration in Africa II: Rationalizing Regional Economic Communities*. Retrieved 06: 27: 2012, from [www.uneca.org](http://www.uneca.org).

<sup>5</sup> One of such regional economic organisations in the world today is the European Union which started formally with the proposal by the French Gaullist, Michel Debre and the subsequent sectoral integration through the Merger Treaty of 1967. The Treaty established a Single Council and a Single Commission of the European Communities. See Babalola S.A. (1996). *Temporal Scope of ECOWAS and AEC Treaties: A case for African Economic Integration*. *African Journal of International and Comparative Law*. Vol. 8 pt 1. P110.

<sup>6</sup> See Jackson J. H. (1999). *The World Trading System: Law and Policy of International Economic Relations*. London, Cambridge Massachusetts. The MIT Press. P 165. See also, Huelsemeyer. A. (2008). *Towards a General Theory of Regional Economic Integration: Fictitious or Feasible? A paper prepared for the 49<sup>th</sup> Annual Convention of the International Studies Association, San Francisco, CA, March 2008;*

Nieuwkerk A.V. (2001). *Regionalism into Globalism: War into Peace? SADC and ECOWAS compared*. *African Security Review*. Vol.10 no.2. p1.

<sup>7</sup> Note that many of the economic integration efforts in the various regions of the world have been typified by treaties permitting free movement of goods and persons and perhaps, a single currency. Apart from the United States (which can be described as the most extensive and successful economic and political integration) it is only European Union that has so far introduced a single regional currency “Euro” following the signing of the Treaty of Maastricht on February 7 1992 by the Foreign Ministers of all the then twelve member states which was subsequently ratified and came into force on November 1993. The single currency became a reality on January 1 1999.

<sup>8</sup> See Noyer C. (1999). *The Role of the Euro as a new European Currency: A speech delivered by him as the Vice President of the European Central Bank, the European Institute, New York on 29 Sept.*

necessary to have a monetary union before an economic integration process can be said to be successful a monetary integration signified by a single currency is seen as having the further advantage of solving the exchange rate and currency convertibility problems among the constituent states. The clamour for economic integration is therefore usually followed by the expressed desire for a single currency within the region<sup>9</sup>.

The African continent has not only been concerned with a continental approach to its development challenges but has also embraced regional economic<sup>10</sup> and monetary integration<sup>11</sup> as part of the means to actualize its development goals<sup>12</sup>. This process has been on since the early 60s and formed part of the considerations for the formation of the Organisation of African Unity (OAU). Although the OAU has transformed into African Union it is not the type of economic union contemplated in the treaty establishing the African Economic Community. While the integration process is still on the dream is far from being realized. Moreover, the current global economic challenges have thrown further complications into what is already a complex process. Notwithstanding the amount of resources already poured into this integration process and the extensive backing of Africa's foreign donors and supporting institutions like the United Nation's Economic Commission for Africa (UNECA) we believe that it is not too late for the African Continent to pause and ask some critical questions: first, is it an inevitable necessity for Africa to integrate its economy in order to gain global competitiveness? If yes, should it continue with its present legal and institutional models as contained in the various treaties? These questions are not mere matters of yes or no; more importantly they are questions which should be raised in the light of present experiences and policy choices of the European Union since its economic integration ran into crises due to the economic crises since 2008. This is not to in any way think that Africa can be favourably compared with Europe in terms of governance, policy sophistication or other economic fundamentals. However, we believe that the present European economic crises and its ability to survive up to this point hold a lot of lessons for the African integration agenda. The purpose of this paper therefore is to highlight some of the

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1999 retrieved 06:27:2012, from [www.ecb.int](http://www.ecb.int), where he stated that on 1<sup>st</sup> January 1999 The European Union achieved a new and unprecedented stage of economic integration. See also Poon. W. (2009). Economic Integration and the Optimum Currency Area. Accountants Today. Feb. 2009. P16. Retrieved 06:27:2012 from [www.Mia.org.my/at/2009/02/06.pdf](http://www.Mia.org.my/at/2009/02/06.pdf).

Lowenfeld had pointed out that the volatile exchange rate crises in Europe and the desire to have a currency that can effectively compete with American Dollar was at the root of European economic and monetary union. See Lowenfeld A. F. footnote no 5 above. P. 638.

<sup>9</sup> And this is as much the case in Africa as it is in other regions of the world. In Africa there are efforts not only for introduction of a regional currency but also at sub regional levels as a precursor for the continental currency. See also, for example, Hashmi S and Lee. Y. (2008). Towards East Asian Economic Integration. European Journal of Economics Finance and Administrative Sciences. Retrieved 06:27:2012 from [www.eurojournalsn.com](http://www.eurojournalsn.com).

<sup>10</sup>See article 3 of the Constitutive Act of the African Union 2002; Article 6 of the Treaty establishing the African Economic Community 1991, (the Abuja Treaty).

<sup>11</sup> The Committee of African Central Banks announced in 2003 that they will work towards the introduction of a single African currency in 2021 or 2028 at the latest. See UNECA. (2008). Towards Monetary and Financial Integration in Africa: Assessing Regional Integration in Africa III. Retrieved 06:27:2012, from [www.uneca.org](http://www.uneca.org). P. 33.

<sup>12</sup>See OAU (1980). Lagos Plan of Action for the Economic Development of Africa and the Final Act of Lagos – 1980-2000. This document represents the most comprehensive articulation of Africa's development challenges and the way forward. Although the time frame for its actualisation is past most of the issues raised in the document remains very relevant and yet to be actualised.

areas which African leaders must revisit in its legal framework, otherwise, the African Economic Integration may never materialise meaningfully.

### **Africa's Development Challenges**

The need for African economic and monetary integration may best be appreciated by first looking at the magnitude of work required to help Africa grow and develop economically<sup>13</sup> at least within the minimum standard set by the United Nations in the Millennium Development Goals (MDG)<sup>14</sup>. Africa has suffered monumental development tragedy. According to the March 2005 report of the Economic Commission for Africa, "Africa's poverty and stagnation is the greatest tragedy of our time"<sup>15</sup>. As has been pointed out<sup>16</sup>, understanding this tragedy requires a brief evaluation of the poverty statistics for the developing world in the past three decades. In 1970 there were 1.2 billion poor people in the developing world. Of this number there were 104 million in Sub-Saharan Africa, 830 million in East Asia, 208 million in South Asia 36 million in Latin America and 27million in the Middle East and North Africa<sup>17</sup>. Between 1970 and 2000, there was a tremendous reduction in the number of poor people in the developing world. More specifically the number fell from 1.2billion in 1970 to 114 million in 2000. Sub-Saharan Africa happens to be the only sub-region where there was a tremendous increase in the number of poor people during the period. With a head-count ratio of 54.8 percent in 2000 it also has the highest proportion of domestic population that are poor<sup>18</sup>. Notwithstanding the progress recorded so far through the MDG programmes Africa still maintains a very high level of poverty<sup>19</sup>, now exacerbated by the perennial drought in the horn of Africa where an estimated 10 million people are being ravaged by extreme poverty which necessitated the United Nations recently to declare famine in some parts of Somalia.

The post colonial Africa saw a sharp but short-lived economic prosperity in the early 1960s. The sudden economic down-turn that hit the region in the early 1970s continued until very recently. The downward spiral saw Africa's Gross Domestic Product (GDP) plunging from 4.3 per cent per annum in the period 1971-1975 to 1.1 per cent in 1981-1985<sup>20</sup>. Africa's economic growth however started a process of recovery in 1994<sup>21</sup> and remained strong till 2007<sup>22</sup>. Although there was a

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<sup>13</sup> The information contained here represents mostly the development situation of Sub-Saharan Africa. Although the situation may vary slightly in the remaining parts of the region Sub-Saharan Africa represents a fair analysis of the development crises within the continent. Also, the statistics given here are usually derived from the average economic performance the fact is that it hides the variations among the various states within the continent. While some countries, like Botswana has had a robust economic growth, many others performed way below the average given above. See for example, the World Trade Organisation's list of least developed countries of the world. [www.wto.org/tradetopics/development](http://www.wto.org/tradetopics/development).

<sup>14</sup> United Nations Millennium Declaration, Millennium Development Summit, September 2000.

<sup>15</sup> UNECA. (2005). The Millennium Development Goals in Africa: Progress and Challenges Retrieved 06:27:2012 from [www.uneca.org](http://www.uneca.org).

<sup>16</sup>Hammouda H.B & Osakwe P.N. (2008). Financing Development in Africa: Trends, Issues and Challenges. African Integration Review. Vol. I No 2.

<sup>17</sup> Cooper R. (2005). A Half-Century of Development. CID Working Paper, No 118. Harvard University. Cited by Hammouda H.B and Osakwe P.N, *ibid*.

<sup>18</sup> *Ibid*.

<sup>19</sup> See the United Nations Millennium Development Goals Report, 2010, available at [www.un.org/mdg/report/](http://www.un.org/mdg/report/)

<sup>20</sup> World Bank. (2005). Economic Growth in the 1990s-Learning from a Decade of Reform. Washington DC: World Bank.

<sup>21</sup> See Africa Progress Panel (APP) (2008). African Progress Panel Report. P7.

general decline in the world economic growth<sup>23</sup> that of Sub-Saharan Africa remained relatively strong moving from 5.7 percent in 2006 to 5.8 percent in 2007.<sup>24</sup> Relative to 1980s and 1990s there has been a marked improvement in economic growth and development in the region. For example, over the ten year period 1988-1997, average real per capita output growth was negative (-0.4 percent)<sup>25</sup>. Since 2000, the region has had positive real per capita output growth with a peak of 3.3 percent in 2004. Consumer price inflation fell from an average of 29.1 percent over 1988-97 to 8.5 percent in 2005. The region also moved from a current account deficit of 8.1 percent (of export of goods and services) over the period 1988- 97 to a surplus of 5.9 percent in 2000<sup>26</sup>. There are however certain problems relating to this economic growth. First, the growth level is not high enough to attain the Millennium Development Goals<sup>27</sup>. Furthermore, African growth areas were largely due to the rise in prices of commodities. These primary products are however highly selective and mainly in the extractive industries<sup>28</sup>. This has given rise to what has been described as jobless growth<sup>29</sup>, that is, an economic growth without a commensurate increase in job creation. In fact, in some countries like Nigeria while economic growth is increasing poverty level is also increasing, even by official government statistics<sup>30</sup>.

Nowhere else has Sub-Saharan Africa's growth tragedy been more dramatic than in the area of trade and industrialisation<sup>31</sup>. For average African country, income per capita was much lower in 1999 than in 1979 and Africa's share of world trade was about half its share in 1960<sup>32</sup>. Africa's market share was down from 6 percent of world export in 1980 to 3 percent in 2007<sup>33</sup>. This is despite four decades of quantum development assistance, preferential trade arrangements such as the EU-ACP Lome and Cotonou Agreements, and experiments with various brands of trade- industrial

<sup>22</sup>See ECA, AU., (2008). "Economic Report on Africa 2008: Africa and the Monterrey consensus, Tracking Performance and Progress. Retrieved 06:27:2012 from [www.uneca.org](http://www.uneca.org).

<sup>23</sup> The world Economic growth slowed from 3.9 in 2006 to 3.7 in 2007. Two major causes of this slow down was the rising oil price and the financial crises being experienced in many developed countries. Although the oil price have fallen significantly the economic crises have persisted and there remains a slowdown in economic investments.

<sup>24</sup> ECA Economic Report, *supra*. P.3. But see APP Report 2008 *supra*, which puts the statistics on a more favourable figure of 6.6 in 2007 using the IMF growth rate estimates.

<sup>25</sup> IMF. 2006. World Economic Outlook. Retrieved 03:18:2009 from [www.imf.org](http://www.imf.org); ECA (2006), Economic Report on Africa.

<sup>26</sup> *Ibid*. See Hammouda H.B and Osakwe P.N. Financing Development in Africa: trends, Issues and Challenges. African Integration Review. Vol. I No 2.

<sup>27</sup> See UN, (2005) The millennium Development goals Report 2005 and The Millennium Development Goals Report 2008. Retrieved 06:26:2012 from [www.un.org/millenniumgoals/pdf/the%20millennium%20development%20goals520report%202008.pdf](http://www.un.org/millenniumgoals/pdf/the%20millennium%20development%20goals520report%202008.pdf).

<sup>28</sup>UNECA. (2007). Accelerating Africa's Development through Diversification. Economic Report on Africa 2007. Addis Ababa, Ethiopia. United Nations Publications. See also UNECA, (2011) Economic Report on African 2011: Governing Development in Africa – the Role of the State in Economic Transformation" Addis Ababa, Ethiopia. P. 29.

<sup>29</sup> *ibid*

<sup>30</sup> see the 2012 report of Nigeria's National Bureau of Statistics available at [www.nigerianstat.gov.ng](http://www.nigerianstat.gov.ng).

<sup>31</sup> Soludo C.C & Ogbu O. (2001). A Synthesis of Major Themes in the Political Economy of Trade and Industrialisation in Africa. The Politics of Trade and Industrial Policy in Africa- Forced Consensus? IDRC Books. Retrieved 04:03:2009 from [www.idrc.ca/en/ev-71226-201-1-DO\\_TOPIC.html](http://www.idrc.ca/en/ev-71226-201-1-DO_TOPIC.html).

<sup>32</sup> *Ibid*.

<sup>33</sup> UNECA. (2008) Economic Development on Africa Report 2008. p1. It was noted here also that the recent substantial rises in African countries' export earnings have not allowed Africa to recover its lost market share.

policies bordering on trade liberalisation<sup>34</sup>. Africa remains the only region that has failed to diversify production and expand trade in the past 30 years.<sup>35</sup>

Apart from the dismal performance of Africa's trade with the world, intra-African trade figures continue to be unsatisfactory, compared to the other regions of the world despite substantial progress made by some countries and regional economic communities in reducing and eliminating tariff and non-tariff barriers<sup>36</sup>. In fact, some writers have argued that there are no reliable records on intra-African trade.<sup>37</sup> Africa also ranks the least in attracting both foreign direct investments (FDI) and portfolio investments,<sup>38</sup> although the recent global economic crises have pushed investors to look more into developing countries, including Africa for their investments, whether this trend will be sustained in the long term for the continent is not clear. The level of investment in Africa is very low with her share of global FDI inflows remaining below 5 percent in the first decade of the 21<sup>st</sup> Century.<sup>39</sup> It has been noted however that in 2005 there was a big boost in FDI flows to the Sub-Saharan Africa<sup>40</sup> but, like other sources of finance to the sub region both the character and the spread of the FDI have been very selective<sup>41</sup>. Moreover the effect of the present global economic meltdown on this has been very evident. The critical nature of development challenges in Sub Saharan Africa has made the region a net receiver of official development assistance (ODA)<sup>42</sup>. Many of the countries are increasingly depending on aid to finance their budgets<sup>43</sup>. The G8 summit at the dawn of the Millennium committed itself to scaling up aid flows to Africa<sup>44</sup>. The nature

<sup>34</sup> Ibid.

<sup>35</sup> Ibid, at p4.

<sup>36</sup> Ibid. At p.5. the authors pointed out for instance, that in 2004 intra African trade accounted for only 9 percent of the total volume of the continent's export, which is slightly lower than 9.2 percent in 2003. On the other hand, trade within European countries accounted for 67 percent of the total volume of exports from Africa.

<sup>37</sup> See for example, Guerin S.S., (2006). *The Role of Geography in Financial and Economic Integration: A Comparative analysis of foreign Direct Investment, Trade and Portfolio Investment Flows*. Journal compilation. Oxford. Blackwell publishing Ltd.

Nwabuzor A.M. (2002) *Economic Integration in Africa: Trade flows within various Blocs*. Retrieved 06:27: 2012 from [www.jsd-africa.com](http://www.jsd-africa.com).

<sup>38</sup> See Guerin S.S. supra. P 5.

<sup>39</sup> Mkwezalamba M.M & Chinyama E.J. (2007). *Implementation of Africa's Development Agenda: Challenges and Prospects*. African Integration Review. Vol 1 No.1. see also, the World Investment Report 2011, UNCTAD released on 26<sup>th</sup> July, 2011.

<sup>40</sup> Net inward FDI flows to the sub region reached an all time high of \$17.6 billion. This rapid increase in FDI flows was due to high commodity prices and rising corporate profits. As in previous years a large percentage of FDI inflows to the sub region went into a few countries with extractive industries. UNECA. (2006). *World Investment Report*. New York, Geneva. United Nations Publications.

<sup>41</sup> Hammouda H.B & Osakwe P.N supra. At p13.

<sup>42</sup> Ibid. The authors have pointed out that in recent years there has been an interesting shift in the geographic distribution of ODA. In the 1970s, countries in Asia accounted for a large share of ODA. However, since the 1979 oil price shock, Sub Saharan Africa accounts for a larger share of ODA. For example, over the period 1993- 94 about 27 percent of ODA went to Sub Saharan Africa. The other sub regions of the world got less than 25 percent. For the period 2003- 2004, Sub Saharan Africa accounted for about 36 percent of ODA.

<sup>43</sup> As further noted by the authors that, given the relatively low domestic savings ratios of countries in Sub Saharan Africa, the sub region has and will continue to rely on access to ODA as a major source of financing development, except drastic steps are taken to boost private capital flows and or mobilise domestic savings.

<sup>44</sup> The various initiatives include the Monterrey Consensus adopted by Heads of State and Government at the International conference on Financing for Development, held from 21- 22 March 2002; the Rome, Marrakech and Paris Declarations and the Gleneagles Declaration. See Africa's

and character of aid flows is however important (that is, in terms of quantity, quality, conditionality and the cost of accessing the funds) as there has not been any identified correlation between increase in aid and increase in development in Africa<sup>45</sup>. But experts have pointed out that even in this age of globalization solution to Africa's development challenges will come from Africans themselves.<sup>46</sup>

Other factors affecting development in Africa include peace and security<sup>47</sup>, bad governance<sup>48</sup>, geography<sup>49</sup>, wrong policy choices<sup>50</sup>, lack of infrastructural development<sup>51</sup>, weak economic institutions, poor system of justice administration, insufficient manpower and brain drain, among others.<sup>52</sup> The reality of the scourge of civil war and armed conflict is very evident in Africa. Many African countries have either participated or are involved in one armed conflict or the other. One major characteristic of these conflicts is that they are largely internal. It can therefore be said that Africa is always at war with itself. Notwithstanding the various provisions in principle and the various efforts at peace keeping<sup>53</sup>, there is a large problem of capacity for African Union to effectively tackle the security problems within the continent<sup>54</sup>. Africa has the largest share of the "Arab Spring", both in its number of casualties and continental spread. The initial insinuation that this is peculiar to Arab has quickly been dispelled by the various military coups and other security issues being staged in Mali and other parts of the continent.

Progress Panel. (2008). "Africa's Development: Promises and Prospects. Accessed on 15:03:09. [www.africaprogess.org](http://www.africaprogess.org). see also, Hammouda H.B & Osakwe P.N. op. cit. At pp 21-23.

<sup>45</sup> See generally, Hammouda H.B & Osakwe p.N. op. Cit. Pp 9- 31.

<sup>46</sup> National Intelligence Council. 2005. Mapping Sub-Saharan Africa's Future. Supra. P1. It is common knowledge that despite the numerous efforts and renewed commitments of development partners, many of them have fallen short of their commitments in this regard.

<sup>47</sup>The preamble to the Constitutive Act of African Union, 2001, provides in part thus, "CONSCIOUS of the fact that the scourge of conflicts in Africa constitutes a major impediment to the socio-economic development of the continent and of the need to promote peace, security and stability as a prerequisite for the implementation of our development and integration agenda". Article 3 (f) of the Act provides for promotion of peace, security and stability within the continent as part of its objectives. Article 4 (h) of the Act provides for the right of intervention by the union in a member state pursuant to a decision of the Assembly in respect of grave circumstances as part of its principles.

<sup>48</sup> The African Peer review Mechanism is the African Union's mechanism for ensuring the adoption of policies, standards and practices that lead to democracy, political, economic and corporate governance within the region.

<sup>49</sup>See generally Acemoglu D., Johnson S & Robinson J.A. Reversal of Fortune: Geography and Institutions in the Making of Modern World Income Distribution. National Bureau of Economic Research. Working paper No. 8460.

<sup>50</sup>See Soludo C.C & Ogbu O. (2001). A synthesis of Major Themes in the Political Economy of Trade and Industrialisation in Africa. The Politics of Trade and Industrial Policy in Africa-Forced Consensus. IDRC Books. Available at [www.idrc.ca/en/ev-71226-201-DO\\_TOPIC.html](http://www.idrc.ca/en/ev-71226-201-DO_TOPIC.html); Soludo C.C & Ogbu O. (2001). The Politics of Trade Policy in Africa. The Politics of Trade and Industrial Policy in Africa-Forced Consensus. IDRC Books. Available at [www.idrc.ca/en/ev-71226-201-DO\\_TOPIC.html](http://www.idrc.ca/en/ev-71226-201-DO_TOPIC.html)

<sup>51</sup> See A.P.P., (2008) Africa's Development : Promises and Prospects. P 11.

<sup>52</sup> Chimanikire D.P. (2005). Brain Drain: Causes, and Economic Consequences for Africa. African Association for Public Administration and Management. 27th AAPAM annual roundtable Conference, Zambia 5th – 9th December 2005. P. 7.

<sup>53</sup>Apart from the provisions of the Constitutive Act on Peace and Security, other documents include The Vision, Mission and Strategic Plan of the African Union, African Union Commission, "The Review of the Millennium Declaration and the Millennium Development Goals. 2006.; Declaration on the Framework for the OAU Response to Unconstitutional Changes of Government; Protocol Relating to the Establishment of the Peace and Security Council, March 2004.

<sup>54</sup>See Kioko B. (2003). The Right of Intervention under the African Union's Constitutive Act: From Non-Interference to Non Intervention. IRR. Vol. 85. No 852.

There is no doubt that Africa has an enormous development challenges exacerbated by globalization and the current spate of unprecedented global economic recessions. Solutions to these challenges must primarily come from Africa itself. Africa's development partners have usually failed in keeping up to their promises to Africa and it seems that the global economic recession will make it even more difficult to keep such promises or to make new ones<sup>55</sup>. African leaders have grappled with these challenges in the past decades and the duty to get it right lies squarely on them. One of the strategies adopted by the leaders in dealing with these challenges is African economic and monetary integration. There is an abiding faith in the integration process (and of course, as has been noted, integration is not unique to Africa) and it can be said that when successful economic and monetary integration will deliver the benefits to Africa.

## 2. WHY INTEGRATE?

The organization of modern economic relations amongst states within a geographical region in such a manner as to increase their economic ties and cooperation so as to confer certain advantages to themselves that are not available to others has been on the increase. This is generally referred to as economic integration. Although there are different shades and practices to economic integration, certain stages have been generally identified. The first stage is the creation of Preferential Trade Area (PTA)<sup>56</sup>.

The second stage is the formation of Free Trade Areas (FTAs), where tariffs and non-tariff barriers are abolished among members. The third stage involves the establishment of a Customs Union (CU)<sup>57</sup>. The fourth stage is a Common Market (CM), involving a Customs Union and harmonisation of labour and capital mobility. The fifth stage is reached when an economic union is formed. At this stage there is a common market with complete unification of monetary and fiscal policies by the central authority. The final stage has been identified as involving the formation of a supra-national union where members hand over sovereignty in economic and social policies to a supra-national government<sup>58</sup>. There is however nothing that forbids the integrating entities from going further in their efforts by forming a political union<sup>59</sup> through political integration. Different regions of the world, including Africa<sup>60</sup>, are pursuing economic integration that will culminate into a monetary union and the successful take-off of the European Monetary Union through the introduction of

<sup>55</sup> As is being presently witnessed in the United Nations Intervention programmes in the drought-ravaged areas of Ethiopia and Somalia.

<sup>56</sup> This is a situation where states within a geographical location decides to create a common lower tariff for imports emanating from fellow member-states while the member-states are at liberty to fix their individual tariffs on goods emanating from third-party states. For a full discussion on the practice of PTA and the problems associated with definition of rules of origin, see Jackson J.H. (1997). "The World Trading System: Law and Policy of international Economic Relations". (2<sup>nd</sup> E.d). London, Cambridge Massachusetts. The MIT Press. P. 165.

<sup>57</sup> A Customs Union involves the pursuit of common external commercial relations by members and establishment of a common external tariff on imports from non-members. There is also the abolition of tariff and non-tariff barriers and the creation of a enabling environment for the free movement of goods and persons within the union.

<sup>58</sup> Poon W. (2009). Economic Integration and the Optimum Currency Area, (OCA). *supra*.

<sup>59</sup> An example of a political union usually cited by authors is the United States of America.

<sup>60</sup>The present African integration process envisages an economic integration, although the possibility of a political integration at the long run is not excluded. See Article 6 of the Treaty Establishing the African Economic Community (the Abuja Treaty), 1991. See also the "Accra Declaration", 2009, which was adopted by the Assembly of Heads of State and Government with the aim of accelerating the economic and political integration of the African continent and also for the formation of a Union Government for Africa, with the ultimate objective of creating a United States of Africa.

Euro gave impetus to the expectations of the other regions. The effects of globalization and the current trends in international trade has made it even more imperative for economic integration, such that it has been noted that even the only superpower in the world feels inadequate in front of the economic globalisation and needs to look for support in regional grouping.<sup>61</sup>

Benefits of economic integration have been powerfully put by its proponents as comprising in the increased economic prosperity and relevance of the integrating region. Reasons for economic integration however go beyond pure economic gains and may include political gains. Several writers have articulated these gains in their various works. For example, Nieuwkerk A.V<sup>62</sup> stated that the arguments in favour of regional co-operation are simple and elegant: it can strengthen the efforts of countries to manage relations with powerful external actors and can facilitate the expansion of markets that will aid industrialization in turn<sup>63</sup>. He further stated that the ruling elite continue to believe in the fruits of such co-operation, despite the patent inability of many such experiments to deliver tangible results<sup>64</sup>. Several other writers are however more positive than Nieuwkerk in identifying real benefits of economic and monetary integration. UNECA<sup>65</sup> succinctly put the rationale for economic integration thus: the contribution of regional cooperation and integration to the promotion of inter-group trade, growth, development and social and political cohesion is unquestionable. Removal of boarder controls, harmonisation of macroeconomic, sectoral and institutional policies and actions, liberalisation of trade, free movement of people and capital are expected to result in more efficient use of resources as well as in productivity and income gains. Participating countries are expected to fare better with integration than without it. The productivity gains arising from economies of scale and cost saving arrangements are also likely to strengthen internal as well as external competitiveness of products and firms. Economic gains in turn are likely to facilitate the process of political and social cohesion and unity.<sup>66</sup>

In the survey carried out by Dvorsky, Scheiber. and Stix,<sup>67</sup> on the impact of Euro on foreign currency holding in Central, Eastern and southern Europe (CESEE) they noted that in all countries surveyed, the share of respondents supporting cash holdings denominated in US Dollar is substantially lower than that of Euro cash holders. As earlier Oesterreichische National Bank (OeNB) surveys have shown for the Central and Eastern European (CEE) countries, the importance of US dollar

<sup>61</sup> Hashmi S.M & Lee Y.T. (2008). Towards East Asian Economic Integration". European Journal of Economics, Finance and Administrative Sciences. Vol.12. p117. Available at [www.eorojournalsn.com](http://www.eorojournalsn.com)

<sup>62</sup> (2001). Regionalism into Globalism? War into Peace? SADC and ECOWAS Compared. African Security Review. Vol.10. No.2. at P2.

<sup>63</sup> Citing Ake C. (1981). A political Economy of Africa. Essex. Longman Publishers. P160.

<sup>64</sup> Several other authors have however shown that economic integration bears many tangible results. See for example, Hallet .M. 1998. "the Regional Impact of the Single Currency". European Regional Science Association, 38<sup>th</sup> European Congress. Vienna, Austria.august 28 to September 1, 1998.; Dvorsky S., Scheiber T. & Stix H. (2008). Euroization in Central, Eastern and Southern Europe – First Results from the New OeNB Euro Survey". Oesterreichische National Bank Eurosystem. Retrieved 06:27:2012 from <http://ceec.oenb.at>. Guerin S.S 2006. The Role of Geography in Financial and Economic Integration: a Comparative Analysis of Foreign Direct Investment, Trade and Portfolio Investment Flows. Retrieved 06:27:2012 from [www.oenb.at/de/img/feei\\_2008\\_dvorsky\\_tcm14-8674.pdf](http://www.oenb.at/de/img/feei_2008_dvorsky_tcm14-8674.pdf).

<sup>65</sup> UNECA. 2008. "Assessing Regional Integration in Africa III". Towards Monetary and Financial Integration in Africa. Retrieved 06:20:2012 from [www.uneca.org/aria/aria2/ARIA3\\_ENG.pdf](http://www.uneca.org/aria/aria2/ARIA3_ENG.pdf).

<sup>66</sup> Ibid.

<sup>67</sup>Dvorsky S., Scheiber T. and Stix H. 2008. "Euroization in Central, Eastern and Southern Europe – First Results from the New OeNB Euro Survey". Oesterreichische National Bank Eurosystem. Retrieved 06: 27:2012 from <http://ceec.oenb.at>. Pp 48 – 58

cash started to decline at the time of the euro cash change-over. Most people in these countries exchanged their legacy currency cash holding for euro or the respective national currencies, where as an exchange for US dollar cash was relatively modest. Also it was found that the bulk of foreign currency deposits were denominated in euro. The authors found the motives for this currency substitution to include storage of value due to perception of euro as a very stable and trustworthy currency, making of payments abroad and the hope of a future integration of the countries into the European Union<sup>68</sup>. Currency convertibility is one of the reasons for economic integration. It has been pointed out that, although competition with the US dollar is not the reason why the European Union established the euro currency regime it has fared well in creating a balance and relevance for the union in relation to US dollar<sup>69</sup>.

In reference to East Asian economic integration, Hashmi S.M and Lee Y.T pointed out the reason for the region's rapid economic integration to include: first, the economic globalisation as backdrop regional grouping pace is accelerating; the world is divided in several regional blocks and zones. Second, the most fundamental reason for the emergence of recent initiatives for institutional cooperation to support economic integration in Asia is the deepening of regional economic linkages and interdependence. Third, there is a common consternation among the East Asian countries that after the European and North American economic integration, the two big blocks will dominate the rule-setting global economy, with marginalised role and weight for other countries. To keep abreast with the new scenario and to keep the power balance, it is inevitable for East Asian countries to establish a similar block so as to play its due role in global economic affairs. Fourth, Asian financial crises of 1997 – 1998 was an eye opener. The crisis had taught the important lesson that East Asia needs to strengthen monetary and financial cooperation.

### 3. AFRICA'S INTEGRATION LEGAL FRAMEWORK

The importance of a well-articulated legal foundation for any form of regional cooperation cannot be over-emphasised. The success of African economic integration is predicated first on a proper legal foundation and structure. While much of the issues raised above are policy-related, there is the need for a proper legal framework for an African integration that can effectively tackle these challenges and realise the benefits usually associated with economic integration. The two principal legal instruments on African Economic Integration are the Constitutive Act of the African Union and the Treaty Establishing African Economic Community (the Abuja Treaty)<sup>70</sup>.

While the Abuja Treaty preceded the Constitutive Act<sup>71</sup>, the Act provides the general framework for Africa's regional cooperation, having replaced the Organisation of African Unity (OAU) with African Union (AU). The Treaty Establishing the African Economic Community<sup>72</sup> is the principal legal document establishing and regulating the Economic Community<sup>73</sup>. The African Economic community forms the economic wing of the African Union<sup>74</sup>. The Treaty entered

<sup>68</sup> *ibid*

<sup>69</sup> See Noyer C.(1999). "the Role of Euro as a new European Currency. *supra*.

<sup>70</sup> Available at [www.au.int/en/treaties](http://www.au.int/en/treaties).

<sup>71</sup> Which entered into force on May 26<sup>th</sup> 2001.

<sup>72</sup> The Abuja Treaty, 1991.

<sup>73</sup> Article 2, Treaty Establishing the African Economic Community, 1991 (the Abuja Treaty).

<sup>74</sup> Kouassi R.N. (2007). *The Itinerary of the African Integration Process: An Overview of the Historical Landmarks*. African Integration Review. Vol. 1. No. 2. At p.6. the author noted that the Abuja Treaty, through its objectives, structures and content constituted a historic opportunity for

into force on the 12<sup>th</sup> of May 1994<sup>75</sup>. It is divided into 22 chapters with each chapter providing for a specific area of the integration process. Its article 6 provides six stages of implementation of the integration process culminating into a single African market and an African currency within a period of 34 years starting from 1994.

The first of the stages is to strengthen the already existing sub-regional economic communities and establish new ones within five years where they did not exist. The second stage envisaged the stabilization of tariff and non-tariff barriers and a timetable for their eventual removal within 8 years. It also envisaged the strengthening of the sectoral integration and harmonization of the economic communities. The treaty intended the establishment, within ten years, of a Free Trade Area in each of the economic communities and the adoption of common external tariff at its third stage of implementation. This will further be harmonized within two years among the various regional economic communities with a view to establishing a Customs Union at the continental level at the fourth stage. The fifth stage of implementation of the treaty envisaged the establishment, within four years, of an African Common Market through the adoption of common policy in key sectors of the African economy; harmonization of monetary, financial and fiscal policies and granting the right of free movement of persons, right of residence and establishment.

The last stage of this programme involves the consolidation of the structure of the African Common Market through the free movement of people, goods, capital, services and residence; integration of all sectors, including economic, political, social, cultural and establishment of a single domestic market and a Pan-African Economic and Monetary Union. It also includes the establishment of a single African Central Bank with a single African Currency; the implementation of the final stage of the Pan-African Parliament with a continental universal suffrage; implementation of the final stages of the harmonization of the economic communities, setting up of African multi-national enterprises in all sectors and setting up of the structures of the executive arm of the community.

Other protocols have since been adopted which have direct or indirect bearing on the African integration process. One of such protocols is the Protocol on Relations between the African Economic Community and the Regional Economic Communities<sup>76</sup>. The provisions of the Protocol applies to relations between the Parties and measures that the Parties shall implement in order to fulfil the responsibilities placed on them by Articles 6 and 88 of the Treaty<sup>77</sup>.

The African economic integration is intended to be driven by the Regional Economic Communities (RECs). So far, about eight of such communities have been recognized by the African Union for this purpose<sup>78</sup>. The RECs are regional

African countries to promote their economic activities and thus, the treaty is a gamble on the future of Africa, as a whole and particularly its economic and political future.

<sup>75</sup> Note that 1994 was also the year in which the Uruguay Round was completed and entered into force. The establishment of the WTO in principle provided an unprecedented advancement into trade liberalisation and thus, marked the end of protectionist era in many areas of international trade. It has however been noted that there is still a lot of protectionism going on in the vital sectors of the developed countries, particularly agriculture, such that while they propagate trade liberalisation in those areas where they need markets for their products they are not willing to liberalise those areas which Africa has a comparative advantage. This leaves Africa in a worse situation. See Udombana N.J. (2005). A question of Justice: the WTO, Africa and Countermeasures for Breach of International Trade Obligations. *The John Marshall Law Review*. Vol.38.

<sup>76</sup> The 1998 Protocol.

<sup>77</sup> Article 2 of the 1998 Protocol.

<sup>78</sup> [www.au.int/en/recs](http://www.au.int/en/recs).

economic communities established by geographically contiguous African states for achieving various economic and political aims and objectives. They are variously articulated and some of the states belong to more than one community. They are relatively independent and have individual and at times, differing goals and objectives which emphasize their relative autonomy. Although various works have been done on harmonization of their processes to fit into the African economic integration, differences still exist in both their contents and their timeline for achieving their various objectives. This no-doubt has some implications on the continental integration process.

#### **4. LESSONS FROM THE EUROPEAN EXPERIENCE**

There is no doubt that the outline for the African economic and monetary integration stated above is quite ambitious. The problem however is that much of the provisions have not been realized. 18 years after the entry into force of the Abuja Treaty, the various regional economic communities are still struggling at the various stages of the implementation of their own internal integration process, which is the forerunner to the African economic integration<sup>79</sup>. But even if they eventually realize each of their objectives, the process of harmonization at the continental level may take as much as the realization period or even more, considering their divergences even after their rationalization<sup>80</sup>. The more critical issue here however, is that the European experience, especially since the recent economic recession, has shown that economic integration is not without huge costs. Notwithstanding the various bailout plans executed by the European continental governments, the budget deficits are still alarming in many of the states. The bailout of countries like Greece, Portugal, and Ireland and the general weak economic status of the region have stretched the economic, political and social capital of the Union to their limits. The recent call for bailout of Spanish banks and other bailout plans, and even the unfolding political developments in France and Greek elections all point to the fact that the European integration is not only a fundamental phenomenon to the region but also to the economy of the world at large<sup>81</sup>. Even developing countries like China are now considering rendering a helping hand to the European Union as a way to save the euro zone from collapsing.

Considering that the European Union is more advanced and sophisticated economically, politically, security-wise, technologically and in intra and inter-continental trade, than the African Union, there is no gain-saying that the current crises in the Union serves as a big lesson for the African integration. Working on the premise that economic integration stands to benefit Africa its full realization cannot be possible in the context of current legal, institutional and political regimes that pervade the continent and its integration process. There is the need to introduce far-reaching legal mechanisms to strengthen the fundamentals of this integration process.

There is no doubt that the present legal mechanism for the regional integration through harmonization of relatively autonomous regional economic

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<sup>79</sup> See UNECA (2010) Assessing Regional Integration in Africa IV: Enhancing Intra-African Trade. Retrieved 06:27: 2012 from [www.uneca.org](http://www.uneca.org)

<sup>80</sup> In order to introduce order into the integration process, the African Union in 2006 passed a resolution rationalising the multiple economic groups that sprang up in the continent. Six of such groups were recognised by the Union and they form the basis for the integration process. See General Assembly Resolution, Banjul Gambia, July 2006.

<sup>81</sup> see the cover story of *The Economist* of June 9<sup>th</sup> 2012. *The Economist* (2012) Please can we start the engines now, Mrs Merkel?, June 9<sup>th</sup> 2012, P 13.

communities seems over-simplified. While it may be possible to achieve the integration through this method there is the need for a continental take-over of this process through the provision of strict guidelines and minimum benchmarks in line with present economic realities around the world. These must be adopted and implemented by the regional economic communities as conditions for assessing their readiness for participation in the continental economic integration. These include good, transparent and democratic governance in each of the countries. The experiences of Tunisia, Egypt, Cote d'Ivoire, Libya, Mali and Guinea Bissau have shown that Africa can no longer continue without institutionalizing democracy and good governance. The survival of the European Union so far is largely due to its sophisticated governance structure, which, although criticized by many scholars, cannot be compared with the present fragile African Union. The importance of good democratic governance therefore cannot be over-emphasized as a preliminary condition for African economic integration. The integration treaty must therefore be revised to incorporate this requirement and give a time-line for all countries intending to participate in the integration to comply with, both in substance and in form. This must be different from the present African Charter on Democracy, Elections and Governance<sup>82</sup> in that it must be mandatory for all member states that want to be part of the integration process to ratify and domesticate it as a condition for joining the Economic Community.

A corollary to the above is the adoption of conditions mandating member-states to seek peaceful means of resolving internal disputes, which have the tendency to derail the integration process. Such disputes as political, economic and others with tendencies for war and humanitarian crises within the continent must be submitted by the disputing parties to a continentally supervised arbitral process which outcome must be obeyed as a condition for deriving benefits from the Union. This will help avert needless loss of lives and properties as recently or presently experienced in some parts of the continent. There is therefore the need to establish a continent-wide community court with jurisdiction over state-parties, individuals involved in inter-continental trade disputes and civil rights group whose disputes can have wide continental effects. Although both the Abuja Treaty and the AU Treaty contemplates a judicial arm in the integration process the ascribed jurisdictions are not as extensive as presently proposed. More importantly, the independence of the judicial arm cannot be over-emphasized unlike the present subjection of the judiciary to overriding political interest of the General Assembly presently contained in the various treaties. The question that should spur action in this regard should be "can Africa provide effective substitute to the International Criminal Court or in fact, a better alternative. Such a court must therefore be strong legally, politically, economically and jurisprudentially.

Free movement of goods, persons and services may in fact not be free, especially in the African context where poverty and internal conflicts are ravaging the people. There is the need to effectively define the legal parameters for these free movements, especially since many of the countries lack strong mechanisms for boarder control, arms and crime control, population statistics etc. This may mean proliferation of crime and other side effects of free movement of persons, especially in this era of terrorism. Free movement of persons must therefore be tied to free movement of goods and services. This should start with high profile goods and services, which do not have easily available local substitutes with eventual relaxation of the rules through experiences learned over time.

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<sup>82</sup> (2006). retrieved 06:27:2012 from [www.au.int/en/resources](http://www.au.int/en/resources).

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One phenomenon that has characterized the economic meltdown is the gradual return of protectionist policies even among members of the WTO. If this continues it may even further hurt the already low intra-African trade. A developing example of this is the current diplomatic issues Nigeria and Ghana over participation of Nigerian in Ghana's street trading. While the Ghanaian government has defined Nigerians as foreigners the Nigerian government is of the opinion that its citizens are members of ECOWAS, which is a regional economic bloc within the African continent.

At the economic, monetary and fiscal levels, there is the need to establish forthwith, before attaining the last stage of the integration, supra-national financial and other institutions with powers to articulate uniform minimum benchmarks for economic, monetary and fiscal policies which the member states and the regional economic communities must comply with so as to ensure a smooth transition to a continental union at the last stage of the integration process. These institutions will also be responsible for the establishment of such mechanisms like bailout and intervention funds with conditions for accessing them by member states in times of crises.

Finally, there is the need to establish a minimum level of technological and infrastructural advancement before any state can be admitted into the Union. Also, there is the need for effective intra-African trade, mechanization and diversification in the various countries. A minimum benchmark must therefore be set in these directions. The whole integration process must be flexible, adopting multilateral approach to the processes, such that even if a regional economic community qualifies to join the African Economic Community, states within the region, which do not individually meet the continental requirements, will be denied membership until they meet the requirements. Also, member states may be allowed to join the Union at different levels or status depending on the level of compliance with the various benchmarks. For example, while a state may have full membership status, another state may only benefit from the free movement of goods pending its compliance with other benchmarks.

## 5. CONCLUSION

The desire to achieve a robust and viable African integration is not out of reach. However, individual member states and their regional economic communities have a lot of work to do before this process can be realized. The present economic and investment realities in the world favour developing countries with better investment climates. For African countries to benefit fully in this shift from developed to developing world they must learn some lessons from other successful developing countries like Malaysia and other Asian tigers, who through adoption of deliberate economic and other policies achieved what is now referred to as developmental states. On the other hand, in order to avoid the various pitfalls of the integration process the African continent must learn from the present European economic crises on the possible downsides of economic integration and make necessary adjustments so as to avert such crises within the continent. Certain fundamentals are *sine qua non* for the realization of this integration process within the continent. These include good governance, prudent economic and monetary policies, and transparent financial and capital market integration, prompt and adequate reporting standards, amongst many others. This paper has only articulated a few of the various issues that are required to be revisited in order to achieve this lofty dream of a single African Economic Community.