

# A HARMONY OR A CACOPHONY? THE MUSIC OF INTEGRATION IN THE AFRICAN UNION TREATY AND THE NEW PARTNERSHIP FOR AFRICA'S DEVELOPMENT

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We have noted, at the close of the 20th century, that of all the regions of the world, Africa is indeed the most backward in terms of development from whatever angle it is viewed and the most vulnerable as far as peace, security and stability are concerned.<sup>1</sup>

## I. INTRODUCTION

On July 11, 2000, the Assembly of Heads of State and Government of the Organization of African Unity (OAU), "proudly," adopted the Constitutive Act of the African Union<sup>2</sup> to "replace the Charter of the Organisation [sic] of African Unity."<sup>3</sup> The Treaty establishes an African Union (AU) to, *inter alia*, "accelerate the political and socio-economic integration of the continent."<sup>4</sup> The AU was formally launched on July 10, 2002, at the last summit of the OAU Assembly, which also became the first summit of the AU Assembly. South Africa hosted the summit in Durban, according to a timetable earlier agreed upon at Sirte.<sup>5</sup> It was at that summit that the Assembly emerged into a new order or sensibility. In the Durban Declaration that followed the summit,<sup>6</sup> the Assembly, *inter alia*, paid tribute to the OAU "as a pioneer, a

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1. Organisation of African Unity (OAU), Assembly of Heads of State and Government, Declarations, Resolutions and Decision. *Yaounde Declaration (Africa: Preparing for the 21st Century)*, AHG Decl. 3, pmbl. para. 2, OAU AHG/Res. 247-257 (XXXII)(July 8 – 10, 1996) [hereinafter *Yaounde Decl.*].

2. Constitutive Act of the African Union, May 26, 2001, available at [http://www.kituoachakatiba.co.ug/Act\\_Of\\_Union.htm](http://www.kituoachakatiba.co.ug/Act_Of_Union.htm) (last visited Oct. 13, 2002) [hereinafter *AU Treaty*].

3. *Id.* art. 33(1). See also Charter of the Organization of African Unity, May 25, 1963, 479 U.N.T.S. 39, 2 I.L.M. 766 [hereinafter *OAU Charter*](entered into force Sept. 13, 1963).

4. AU Treaty, *supra* note 2, art. 3(c).

5. See generally the draft calendar for the OAU's activities, available at <http://www.au2002.gov.za> (last visited Oct. 13, 2002).

6. *The Durban Declaration in Tribute to the Organization of African Unity and the Launching of the African Union*, Assembly of the AU, 1st Ord. Sess., Durban, South Africa, 9-

liberator, a unifier, an organizer, and the soul of [the African] continent,”<sup>7</sup> and to “the founding leaders of the OAU” for “their tenacity, resilience and commitment to African Unity” and for standing “firm in the face of the decisive manipulations of the detractors of Africa and [fighting] for the integrity of Africa and the human dignity of all the peoples of the continent.”<sup>8</sup>

Meanwhile, at a special summit in Abuja, Nigeria on October 23, 2001, Africa’s leaders officially launched the New Partnership for Africa’s Development (NEPAD).<sup>9</sup> Previously known as the New African Initiative, NEPAD

is a pledge by African leaders, based on a common vision and a firm and shared conviction, that they have a pressing duty to eradicate poverty and to place their countries, both individually and collectively, on a path of sustainable growth and development and, at the same time, to participate actively in the world economy and body politic.<sup>10</sup>

This paper examines Africa’s latest integration album, to see if all the separate notes melt into a swelling harmony or if the music is a mere cacophony. The enquiry has become necessary because there has been much dissonance in previous attempts, and there seems to be very little to show that this new release is different. The paper starts from the pre-text and then moves to the text before discussing the context. Part II looks at the anatomy of integration in Africa, its concept and processes. It argues on the benefits of integration and on Africa’s journey so far. It concludes that although Africa’s determination has been fervent, the drive has been faltering, making integration in Africa a beautiful utopian dream. “Africa’s commitment to integration has been visceral rather than rational, more rhetorical than real.”<sup>11</sup> Its leaders go down to the sea of integration and there they neither dive nor swim nor float, but only dabble and splash.

Part III of the paper highlights the latest releases—the AU Treaty and the NEPAD—while Part IV points to areas that African leaders will need to address for the needed economic and political rebirth and, hopefully, integration to occur. Part V is the conclusion. This paper is focused on economic integration, although the political aspect will be equally highlighted.

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10 July 2002, ASS/AU/Decl. 2 (1), *available at* <http://www.africa-union.org/en/news.asp?newsid=175> (last visited Oct. 27, 2002) [hereinafter *Durban Decl.*].

7. *Id.* para. 14.

8. *Id.* para. 13. The Assembly also paid tribute “to all the Secretaries General and all the men and women who served the OAU with dedication and commitment.” *Id.*

9. See The New Partnership for Africa’s Development, *available at* <http://www.au2002.gov.za> (last visited Oct. 13, 2002) [hereinafter NEPAD].

10. *Id.* at 1.

11. Percy S. Mistry, *Africa’s Record of Regional Co-operation and Integration*, 99 AFRICAN AFFAIRS 553, 554 (2000).

The reason is because the former is more realizable in the short term than the latter, if the continent's leaders are willing to play the right chord.

## II. THE ANATOMY OF INTEGRATION IN AFRICA: CONCEPT AND PROCESS

### A. *The Concept and Benefits of Integration*

Integration, at any rate economic integration, is the fusion of two or more national economies into one, in which goods, services, persons, and capital circulate freely and major economic policies are decided in common.<sup>12</sup> Various means are used in achieving this. One is the elimination of restrictions and discrimination that prevent or impede the free movement between the integrating countries of goods, services, persons, and capital.<sup>13</sup> The other is by mutual recognition of qualifications acquired in another integrating country, on the basis of an approximation of the various national laws or regulations stipulating the training required to obtain them.<sup>14</sup> Approximation may also be used to attenuate differences in national laws that can distort the conditions of competition in the integrating area, such as taxation, corporations, and intellectual property.<sup>15</sup> These two—removal of restrictions and discrimination and approximation of laws and/or mutual recognition—are often referred to as negative integration.<sup>16</sup>

Negative integration is used to contrast a third factor in economic integration, which involves the removal of obstacles to integration with active steps to further integration of the participating countries through policy harmonization. This is commonly called positive integration,<sup>17</sup> and has two elements: the replacement of national policies with a common policy and the coordination of national policies. This serves the function of correcting distortions that would otherwise arise if integrating countries were left to pursue purely national policies.<sup>18</sup> It also serves the function of deepening the integration of the economies of the participating countries, attaining common social and economic goals, and solving common problems.<sup>19</sup> A common social policy, for example, can be used to improve working and living standards throughout the integrating area on the basis of equal values and

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12. See PHILIP RAWORTH, *INTRODUCTION TO THE LEGAL SYSTEM OF THE EUROPEAN UNION* 26 (2001).

13. See *id.* at 27.

14. See *id.*

15. *Id.*

16. See generally John Pinder, *Problems of European Integration*, in *ECONOMIC INTEGRATION IN EUROPE* 143, 145 (G.R. Denton ed., 1969).

17. See generally *id.* at 145-46.

18. See RAWORTH, *supra* note 12, at 27. Raworth refers to anti-trust policy which can set out common rules that prevent individual countries from abusing state aids or public companies in order to favor local production. See *id.* at 28.

19. See *id.*

levels, while a common environmental policy can deal more effectively with an issue that transcends national boundaries.<sup>20</sup>

In Africa, economic integration is generally seen as a vehicle for enhancing the economic and social development of the continent.<sup>21</sup> It constitutes

the best means for Africa to regain its lost external competitiveness, to strengthen its capacity of negotiation in world affairs, to effectively open up its economies, to rapidly launch its industrial growth and enter the world market through diversification of exports, comparative advantages other than commodities and ultimately mitigate its marginalization.<sup>22</sup>

It is essential, not only for the self-fulfillment of the continent, but also, for securing an appropriate place in a world economy that is characterized by brutal competitions.

There is a generalized wave of fundamental economic restructuring of economic spaces, oriented towards achieving "a real continentalization of markets, and intensification and liberalization of trade and commerce."<sup>23</sup> The reasoning is that if the economically advanced countries of the West deem it necessary to establish regional economic groupings, then African countries, with weak institutional and human capacities, have no choice but to integrate.<sup>24</sup> Besides, the population of some African countries is too small to support economic development. The population of Gambia, for example, is less than two million, while that of most other African countries is, with limited exceptions, less than ten million.<sup>25</sup> Uniting the countries would permit the economies of scale that make countries competitive, providing access to a wider trading and investment environment, inducing backward and forward supply links.<sup>26</sup>

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20. *See id.*

21. *See generally* WORLD BANK, SUB-SAHARAN AFRICA: FROM CRISIS TO SUSTAINABLE GROWTH (1989); *see also* Economic Commission for Africa (ECA), *African Alternative Framework to Structural Adjustment Programs for Socio-Economic Recovery and Transformation (AAF-SAF)*, U.N. Economic Commission for Africa, U.N. Doc. E/ECA/CM.15/6 Rev. 3. Which, though admitting the value of selective market liberalization, nevertheless reaffirmed the importance of government efforts to promote development. *See id.*

22. *Yaounde Decl.*, *supra* note 1, para. 14.

23. *Id.* para. 13.

24. *See, e.g.*, Edwini Kessie, *Trade Liberalisation Under ECOWAS: Prospects, Challenges and WTO Compatibility*, 7 AFR. Y.B. OF INT'L L. 31, 33-4 (1999).

25. *See id.*

26. Economic Commission for Africa (ECA), ANNUAL REPORT ON INTEGRATION IN AFRICA 2002, 2 (2002), available at <http://www.uneca.org/adfi/ariaoverview.htm> (last visited Oct. 13, 2002) [hereinafter ECA ANNUAL REPORT].

Furthermore, integration will promote, on a more complementary and sustained basis, the development of the economies of the Member States. This will come through the reinforcement of the existing regional infrastructure, the development of a more efficient system of payments, greater access to credit, a greater awareness of each other's products, and economic agents operating in the different countries that comprise the community.<sup>27</sup> The prevailing economic, social and cultural problems of Africa cannot, it is further argued, be solved at the national levels, given the precarious situation of these economies. The continent stands a better chance of progressing more rapidly through the establishment of continental mechanisms that are viable. As K. Y. Amoako puts it, "a strong regional economy can facilitate the pooling of risks between otherwise vulnerable economies, and enable the continent to exploit complementarities and attract the levels of investment required to sustain economic growth and development in Africa."<sup>28</sup> Besides, international economics has redefined the concept of "domestic market" to imply the integrated individual member state's national markets. This greatly enhances the growth of small scale and medium scale enterprises.<sup>29</sup>

The realities of the global economy make integration imperative. Short of a backlash against globalization, states will have little choice but to agree to pool their sovereignty to exercise public power in a global environment now mostly shaped by private actors. The enshrined injustices of globalization and, in particular, the marginalization of Africa<sup>30</sup> has clearly shown that powerful countries have a greater opportunity to influence policy outcomes than weaker ones. In today's competitive world, it is the strong that determines the rules for the weak: "[F]or you know as well as we do," says Thucydides, "that right, as the world goes, is in question only between equals in power, while the

27. See Muna Ndulo, *African Integration Schemes: A Case Study of the Southern African Development Community (SADC)*, 7 AFR. Y.B. OF INT'L L. 3, 6 (2001).

28. K. Y. Amoako, *Towards the African Union: A Development Perspective*, available at [http://www.uneca.org/eca\\_resources/Speeches/amoako/2001/070501speech\\_amoako\\_lusaka.htm](http://www.uneca.org/eca_resources/Speeches/amoako/2001/070501speech_amoako_lusaka.htm) (last visited Oct. 13, 2002).

29. See RAJ BHALA & KEVIN KENNEDY, *WORLD TRADE* 159 (1998).

30. But see NEPAD, *supra* note 9, para. 2. The OAU stressed that "[t]he continued marginalisation [sic] of Africa from the globalisation [sic] process and the social exclusion of the vast majority of its peoples constitute a serious threat to global stability." *Id.*

[G]reater integration has also led to the further marginalisation [sic] of those countries that are unable to compete effectively. In the absence of fair and just global rules, globalisation [sic] has increased the ability of the strong to advance their interests to the detriment of the weak, especially in the areas of trade, finance and technology. It has limited the space for developing countries to control their own development, as the system makes no provision for compensating the weak. The conditions of those marginalised [sic] in this process have worsened in real terms. A fissure between inclusion and exclusion has emerged within and among nations.

*Id.* para. 33. See generally Paul Collier, *The Marginalization of Africa*, 134 INT'L LABOUR REV. 541 (1995).

strong do what they can and the weak suffer what they must."<sup>31</sup> A somnolent and foundering Africa risks further marginalization, as the continent will be traveling at a much slower speed than the rest of the world or, worse, traveling in the opposite direction. On the other hand, regional trading blocs are the surest means for poor African countries to protect themselves against the cold wind of globalization and the ravages of world trade.<sup>32</sup>

The preceding arguments and optimism appear to be supported by a recent World Bank study, which indicates that twenty-four countries that increased their integration into the world economy in the past twenty years, ending in the 1990s, achieved higher income growth, longer life expectancy, and better education standards.<sup>33</sup> It has also been suggested that

the liberalization of the economies of the Southern African Development Communities (SADC)—most notably Mozambique, Tanzania and Zambia—has allowed for the participation of private companies in activities traditionally regarded as sacred to the state. This includes, through privatization, the ownership and/or management of water, power, gas utilities, ports and railways, and processing industries.<sup>34</sup>

A further and more dramatic case study is the European Union (EU), which is today the most successful experiment at economic integration. The objectives of the EU are, *inter alia*,

to promote economic and social progress which is balanced and sustainable, in particular through the creation of an area without internal frontiers, through the strengthening of economic and social cohesion and through the establishment of economic and monetary union, ultimately including a single currency in accordance with the provisions of the Treaty.<sup>35</sup>

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31. THUCYDIDES, THE PELOPONNESIAN WAR: THE CRAWLEY TRANSLATION, 351 (T.E. Wick ed., Random House 1982).

32. See Summary Report of the Secretary-General on Economic Cooperation and Integration in Africa, *Towards the Establishment of an African Economic Community*, OAU Doc. AHG/162 (XXV); see also Jozef M. Brabant, *Economic Integration Among Developing Countries: Towards a New Paradigm*, in ECONOMIC COOPERATION AND INTEGRATION IN AFRICA 31 (Naceu Bourenane ed., 1996).

33. See The World Bank Group, *Globalization, Growth, And Poverty: Building An Inclusive World Economy* (2000), available at <http://econ.worldbank.org> (last visited Sept. 5, 2002).

34. James Brew, *Confidence Grows in the Regional Economy*, AFRICAN TOPICS, Jan. – Mar. 2000, at 21.

35. MAASTRICHT TREATY, available at <http://europa.eu.int/en/record/mt/title1.html> (last visited Sept. 5, 2002).

In the pursuit of these objectives, the EU has made strenuous efforts to remove restrictions on the free movement of goods,<sup>36</sup> persons,<sup>37</sup> and the freedom to provide services and the freedom of establishment.<sup>38</sup> There are also pragmatic regulations on the protection of the environment,<sup>39</sup> consumer protection,<sup>40</sup> and egalitarian labor and social policies.<sup>41</sup> Nationals of Member States residing in another Member State enjoy the same social and educational rights as citizens of the host state and are protected at the "community" level

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36. See Commission Directive 70/50 of Dec. 22, 1969, on the Abolition of Measures Which Have an Equivalent Effect of Quantitative Restrictions on Imports, OJ 1970 "L 13," 29; see also Council Regulation 2679/98 of Dec. 7, 1998, on the Functioning of the Internal Market in Relation to the Free Movement of Goods, OJ 1998 "L 337," 8.

37. See Council Regulation 1612/68 of Oct. 15, 1968, on Freedom of Movement for Workers Within the Community OJ 1968 L 257, p. 2, as amended by Council Regulations 312/76 of Feb. 9, 1976, and Council Regulation 2434/92 of July 27, 1992, OJ 1992 L 245, p. 1; Council Directive 73/148 of May 21, 1973, on the Abolition of Restrictions on Movement and Residence Within the Community for Nationals of Member States with Regards to Establishment and the Provision of Services, OJ 1973 L 172, p. 14; and Council Directive 75/34 of Dec. 17, 1974, Concerning the Right of Nationals of a Member State to Remain in the Territory of Another Member State After Having Pursued Therein an Activity in a Self-employed Capacity, OJ 1975 L 14, p. 10; and see generally C. Closa, *The Concept of Citizenship in the Treaty on European Union*, 29 COM'N. MKT. REV. 1137 (1992).

38. See Council Directive 77/249 of Dec. 22, 1977, to Facilitate the Effective Exercise of Lawyers of Freedom to Provide Services, OJ 1977 (L 78), p. 17; see also Directive 98/5 of the European Parliament and of the Council of Feb. 16, 1998, to Facilitate Practice of the Profession of Lawyers on a Permanent Basis in a Member State Other than that in Which the Qualification was Obtained, OJ 1998 (L 77), p. 36.

39. See Council Directive 85/337 of June 27, 1985, on the Assessment of the Effects of Certain Public and Private Projects on the Environment, OJ 1985 (L 175), p. 40, as amended by Council Directive 97/11 of Mar. 3, 1997; see also Council Directive 90/313 of June 7, 1990, on the Freedom of Access to Information on the Environment, OJ 1990 (L 158), p. 56.

40. See Council Directive 92/59 of June 29, 1992, on the General Product Safety, OJ 1992 L 228, p. 24; Council Directive 85/374 of July 25, 1985, on the Approximation of the Laws, Regulations and Administrative Provisions of the Member States Concerning Liability for Defective Products, OJ 1985 L 210, p. 29; Council Directive 93/13 of April 5, 1993 on Unfair Terms in Consumer Contracts, OJ 1979 (L 379), p. 1; Directive 98/6 of the European Parliament and of the Council of Feb. 16, 1998, on Consumer Protection in the Indication of the Prices of Products Offered to Consumers, OJ 1998 (L 80), p. 27; Council Directive 85/577 of Dec. 20, 1985, to Protect the Consumer in Respect of Contracts Negotiated Away From Business Premises, OJ 1985 L 372, p. 31; and Directive 98/27 of the European Parliament and of the Council of May 19, 1998, on Injunctions for the Protection of Consumers' Interests, OJ 1998 (L 166), p. 51.

41. See Council Directive 75/117 of Feb. 10, 1975, on the Approximation of the Laws of the Member States Relating to the Application of the Principle of Equal Pay for Men and Women, OJ 1975 (L 45), p. 19; Council Directive 76/207 of Feb. 9, 1976, on the Implementation of the Principle of Equal Treatment for Men and Women as Regards Access to Employment, Vocational Training and Promotion, and Working Conditions, OJ 1976 (L 39), p. 40; Council Directive 79/7 of Dec. 19, 1978 on the Progressive Implementation of the Principle of Equal Treatment for Men and Women in Matters of Social Security, OJ 1979 (L 6), p. 24; Council Directive 77/187 of Feb. 14, 1977, on the Approximation of the Laws of the Member States Relating to the Safeguarding of Employee's Rights in the Event of Transfers of Undertakings, Businesses or Parts of Undertakings or Businesses, OJ 1977 (L 61), p. 26.

by a common code of fundamental rights elaborated by the Court of Justice and endorsed by the Council, Commission, and the European Parliament.<sup>42</sup> The Court has also enlarged the concept of free movement of persons to include the removal of non-discriminatory obstacles to its exercise.<sup>43</sup>

Of course there are still promises to keep with regards to the European experiment of integration. For example, it is common knowledge that the EU does not have the coercive means to secure the protection of its citizens and to enforce the Union law. The closest approximation to a standing European coercive institution is the North Atlantic Treaty Organization (NATO). However, NATO is strictly not a EU institution, though it has been used in the past to advance the cause of the EU and to bring an end to certain atrocious activities, as in Kosovo.<sup>44</sup> However, it may generally be asserted that the convergence of public policies in Europe is leading to a kind of co-operative federalism without a state. This has been made possible by the emergence of a single European political agenda, a European space for new forms of interest representation, and European modes of operation among actors involved in public decision-making.<sup>45</sup> Thus, it may not be correct to describe the European polity as an "unidentified political object;" rather, the inherent teleology, arising from these co-operations, predestines it, ultimately to the emergence of a European federation. As Philip Raworth puts it, "the European Union now resembles a federal state more than an international trad[ing] grouping."<sup>46</sup> The physical arrival of the Euro,<sup>47</sup> with monetary policies internalized and unified, for example, "is surely a big step towards a more fully integrated European Union . . . ."<sup>48</sup>

42. See, e.g. Joint Declaration by the European Parliament, the Council, and the Commission, Concerning the Protection of Fundamental Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms, OJ C 103/77.

43. See Gouda [1991] ECR I-4007; Gebhard [1995] ECR I-4165; see generally DENIS MARTIN & ELSPEETH GUILD, *FREE MOVEMENT OF PERSONS IN THE EUROPEAN UNION* (1996).

44. See United Nations Daily Press Briefing of Office of Spokesman for Secretary-General, New York (Mar. 25, 1999) (stating that the UNHCR estimates that 450,000 people, the great majority of them civilian Kosovar Albanians, were displaced or expelled from Yugoslavia). The briefing also notes that NATO launched an air campaign against Yugoslavia on March 24, 1999 in order to bring an end to thirteen months of massacres. See *id.*

45. See generally YVES MÉNY ET AL., *ADJUSTING TO EUROPE: THE IMPACT OF THE EUROPEAN UNION ON NATIONAL INSTITUTIONS AND POLICIES* (1996); FINN LAURSEN, *THE POLITICAL ECONOMY OF EUROPEAN INTEGRATION* (1995); *European Unity: But Can it Last?* THE ECONOMIST, Nov. 3, 2001, at 86 (reviewing DAVID P. CALLEO, *RETHINKING EUROPE'S FUTURE* (2001)); GARY MARKS ET AL., *GOVERNANCE IN THE EUROPEAN UNION* (1996).

46. RAWORTH, *supra* note 12, at 237.

47. See *Redefining Europe*, BBC NEWS: IN-DEPT: EUROPE (2000), available at [http://news.bbc.uk/hi/english/static/in\\_dept/europe/2000/redefining\\_europe/default.stm](http://news.bbc.uk/hi/english/static/in_dept/europe/2000/redefining_europe/default.stm) (last visited Aug. 15, 2002). On January 12, 2002, of the fifteen EU members twelve joined the single currency, including: Finland, Ireland, Netherlands, Germany, Belgium, Luxembourg, France, Austria, Portugal, Spain, Italy, and Greece. See *id.* Sweden, the United Kingdom, and Denmark are yet to do so. See *id.*

48. *One Currency, Too Many Markets*, THE ECONOMIST, Dec. 1, 2001, at 14.



Before attempting an assessment of integration effort in Africa, it is necessary to look at the historicity of integration in the continent.

### *B. The Phases of Integration in Africa*

Africa's initiative at continental integration is not new, as five phases in the historical evolution have been identified.<sup>49</sup> These include putting up of supra-national pan-Africanism as the rallying point and the vision for political independence and economic decolonization; damage control of the abrupt reversal of French colonial policy of political and economic integration to one of balkanization and fragmentation before granting independence in 1960; and the search for larger and sustainable sub-regional integration among independent African countries resulting in a breakthrough in sub-regional co-operation arrangements in the 1970s and 1980s. Others include: the historic adoption of the Lagos Plan of Action (LPA);<sup>50</sup> the treaty establishing the African Economic Community,<sup>51</sup> and the giant stride from the AEC Treaty to the adoption of the AU Treaty in July 2000.<sup>52</sup>

The thread that binds all these phases has been "the realization of the imperative of creating an enabling infrastructural environment for regionalism through the regional programming and concerted action in the development of infrastructure."<sup>53</sup> It has been asserted, however, that before the LPA, these phases of historical developments were marked by the search for legitimacy in the economic competence of the OAU and an awareness of the inadequacy of aid, technical assistance, and international strategies.<sup>54</sup> The remainder of this section focuses on two major historical developments—the LPA and the AEC Treaty. The paper also briefly highlights the place of Regional Economic Communities (RECs) to the total picture, before attempting a general critique of the march towards integration in Africa.

49. See Adebayo Adedeji, *History and Prospects for Regional Integration in Africa*, 2, available at [http://www.uneca.org/eca\\_resources/speeches](http://www.uneca.org/eca_resources/speeches) (last visited Aug. 5, 2002); A.M.R. Ramolete & A.J.G.M. Sanders, *The Structural Pattern of African Regionalism*, in COMP. & INT'L L.J. S.AFR. 155 (1971).

50. See THE LAGOS PLAN OF ACTION FOR THE ECONOMIC DEVELOPMENT OF AFRICA (1980) available at <http://www.uneco/adfii> (last visited Aug. 15, 2002) [hereinafter LAGOS PLAN OF ACTION].

51. See *Treaty Establishing the African Economic Community*, adopted June 3, 1991, 30 I.L.M. 1241 (entry into force May 11, 1994) [hereinafter *AEC Treaty*], reprinted in GINO J NALDI, DOCUMENTS OF THE ORGANIZATION OF AFRICAN UNITY 203 (1992). The AEC Treaty itself made references "to the various resolutions and declarations adopted by [the OAU] Assembly in September 1968, in Addis Ababa in August 1970 and May 1973 providing that the economic integration of the Continent is a pre-requisite for the realisation [sic] of the objectives of the OAU." *Id.* pmbl. para. 5.

52. See Adedeji, *supra* note 49, at 2.

53. See *id.* at 3.

54. See Ndulo, *supra* note 27, at 4 – 5.

### 1. The Lagos Plan of Action

In 1961, the UN declared the 1960s as the *United Nations Development Decade*.<sup>55</sup> As part of that effort, the OAU and the Economic Commission for Africa (ECA) convened a colloquium on "Perspectives of Development and Economic Growth in Africa Up to the Year 2000." The resulting document was the "Monrovia Declaration of Commitment on the Guidelines and Measures for National and Collective Self-reliance in Economic and Social Development for the Establishment of a New International Order."<sup>56</sup> Under the Declaration, African States committed themselves, *inter alia*, to the promotion of economic and social development and integration of their economies—with a view to achieving self-sufficiency—and to the promotion of economic integration of Africa.<sup>57</sup> The Declaration also called for the creation of an African Common Market as a prelude to an AEC.<sup>58</sup>

It was, however, in the 1980's and 90's that integration crusade became an urgent mission. In 1980, the OAU launched the LPA and the Final Act of Lagos of 1980—of which one was the integral part of the other.<sup>59</sup> It was a watershed in the analysis of Africa's economic problems, but it was also the blueprint for real economic independence in Africa and was intended to implement the Monrovia Strategy for Economic Development.<sup>60</sup> Though described as "economically illiterate,"<sup>61</sup> the LPA aimed at the self-reliance of African countries, self-sustaining development and economic growth. It was to usher in an era of general prosperity induced by government activism and massive inflows of aid and foreign investments in Africa.<sup>62</sup>

The LPA noted that of the thirty-one countries then designated by the UN as Least Developed Countries (LDCs)—a classification that is calculated to lead to discrimination in their favor—twenty of them came from Africa. It may be observed that this position has worsened over the years. Of the forty-nine countries currently classified as LDCs, thirty-four are from Africa,

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55. See G.A. Res. 1710 (XVI) 1961, U.N.Y.B. 1710 (1961).

56. See AHG/ST.3 (XVI) Rev.1., adopted by the Assembly of States and Government of the OAU in July 1979.

57. See *id.* para 1.

58. See *id.* para 5.

59. See UN General Assembly, *Industrial Development Decade for Africa*, G.A. Res. 35/66B (1980); *Transport and Communications Decade in Africa*, G.A. Res. 32/160 (1977); *Harare Declaration on the Food Crisis in Africa*, G.A. Res. 39/165 (1984).

60. See LAGOS PLAN OF ACTION, *supra* note 50.

61. CHRISTOPHER CLAPHAM, *AFRICA AND THE INTERNATIONAL SYSTEM* 176 (1996).

62. See Rose M. D'Sa, *The Lagos Plan of Action—Legal Mechanisms for Co-operation Between the Organisation of African Unity and the United Nations Economic Commission for Africa*, 27 J. AFR. L. 4, 11-12 (1983); see also Emmanuel G. Bello, *Regional Cooperation and Organisation: African States*, in *ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW*, vol. 4, 107 (Rudolf Bernhardt ed., 2000).

including Angola, Mozambique, Uganda, and Zambia.<sup>63</sup> Senegal is the latest entrant—classified in 2001—though the DR Congo and Ghana have also been identified as meeting the criteria.<sup>64</sup> All the LDCs share the basic characteristic that they are ill equipped to develop their domestic economies and ensure an adequate standard of living for their populations. Their economies are also acutely vulnerable to external shocks or natural disasters.<sup>65</sup> In the thirty years since LDC ranking began in 1971, only one country has improved its economic status and broken ranks—Botswana, which was removed from the list in 1994,<sup>66</sup> the same year that Eritrea and Angola joined the club.

The LPA divided Africa into three sub-regions: West Africa, Central Africa, and East and Southern Africa, each passing through a free trade area, customs union, and economic community.<sup>67</sup> The LPA further envisaged that these regional areas would serve as building blocks for a large economic community for Africa by the year 2000—in a sense anticipating the AU.

63. See United Nations Conference on Trade and Development, *Statistical Profiles of LDC's (2001)*, available at <http://www.unctad.org/conference> (last visited Sept. 15, 2002). The remaining fifteen LDCs include nine from Asia, five from the Pacific, and one from the Caribbean. See *id.*

64. See *id.* Sixteen other countries, including five African countries—Cameroon, Ivory Coast, Kenya, Nigeria, and Zimbabwe—have met some, but not all, of the criteria. See *id.* However, if their economies continue in a downward slide—prompted by rising debt, falling commodity prices and sharp declines in development aid and foreign investments—the ranks of LDCs will keep swelling over the next decade, with Africa continuing to top the list. See *id.*

65. See Arghyrios A. Fatouros, *Developing States*, in I ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 1017, 1019 (Rudolf Bernhardt ed., 2000). The importance of this classification was stressed as far back as 1964, in the Final Act of the United Nations Conference on Trade and Development (UNCTAD) I. See *id.* Since then, the UN General Assembly, through its resolutions, has regularly identified countries falling within the category, on the basis of three tests: very low per capita GNP, very low literacy rate, and low contribution of manufacturing to the gross domestic product (GDP). See *id.* In 1981, the UN organized a Conference on the Least Developed Countries in Paris, where it adopted a Substantial New Program of Action for the 1980s, which lists a series of international measures to assist the poorest of the poor countries. See *id.* Similarly, the overwhelming majority of developing countries are given preferential treatment by all developed countries, though a few states benefit from special preferences by some but not all of the developed states. See *id.*

66. See Brew, *supra* note 34, at 21. It is cheering news to observe that Botswana is currently the world's number one producer of diamonds by value, with production worth 1.9 billion dollars at an average carat price of ninety-seven dollars. See *id.* World production is worth 6.6 billion dollars; Botswana's development record stands in sharp contrast to that of most African countries. See *id.* With a population of about one million people in the 1960s, the country sustained an average *per capita* economic growth rate of ten percent from 1960 to 1980, exceeding that of South Korea or Hong Kong. See ABDI ISMAIL SAMATAR, AN AFRICAN MIRACLE: STATE AND CLASS LEADERSHIP AND COLONIAL LEGACY IN BOTSWANA DEVELOPMENT 8 (1999). While *per capita* income private consumption throughout Sub-Saharan Africa declined at 2.1 percent a year from 1980 to 1997, it increased in Botswana at 2.3 percent. See *id.* The institutional capacity of African states in general to reverse underdevelopment has vanished in the last twenty years, but the capacity of the public sector in Botswana has improved considerably. See *id.* See also Paul Clements, *Challenges for African States*, 36(3) J. ASIAN & AFR. STUD. 295, 303 (2001).

67. See LAGOS PLAN OF ACTION, *supra* note 50.

Progress, however, was slow on the implementation of the LPA. Consequently, in 1985 the OAU adopted the Africa's Priority Program for Economic Recovery 1986-1990 (APPER)<sup>68</sup> to undertake the necessary measures to overcome the economic meltdown in the continent. The Program aimed at identifying areas for priority action for the rehabilitation and recovery of the African economies and mobilizing and fully utilizing domestic resources for the achievement of those priorities. Significantly, the international community simultaneously supported the initiative of the OAU under the APPER. At a Special Session, convened at the request of the OAU, the UN adopted a program of action designed to halt Africa's economic drift.<sup>69</sup> It undertook to promote food production and develop agro-industries and human resources.<sup>70</sup>

Five years later, in 1990, the OAU adopted the "Declaration on the Political and Socio-Economic Situation in Africa and the Fundamental Changes Taking Place in the World."<sup>71</sup> In view of the real threat of marginalization of the continent, the Declaration, which "constitutes a watershed decision as it formed the basis for subsequent intervention and action by the OAU,"<sup>72</sup> sought to address the major factors that should guide Africa's collective thinking on the challenges and options facing her in the 1990s and beyond. The declaration noted, *inter alia*, the changing East-West relations from confrontation to cooperation, the socio-economic and political changes taking place in Eastern Europe, and the steady move towards political and monetary union in Western Europe.<sup>73</sup> Furthermore, the Declaration noted the increasing global tendency towards regional integration and the establishment of trading and economic blocs as well as the advances in science and technology.<sup>74</sup> It affirmed that:

Africa's development is the responsibility of our governments and peoples. We are now more . . . determined to lay [a] solid foundation for self-reliant, human-centered and sustainable development on the basis of social justice and

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68. Adopted by the Assembly of Heads of State and Government of the OAU at its 21st Ordinary Session, held at Addis Ababa from 18 to July 20, 1985.

69. See UN General Assembly, *United Nations Programme of Action for African Economic Recovery and Development 1986-1990*; GA RES 13/2 (1986) [hereinafter *UN Program of Action for Africa*].

70. See *id.*

71. Adopted by the Assembly of Heads of State and Government of the OAU, meeting at its 26th Ordinary Session held in Addis Ababa, Ethiopia on July 11, 1990 [hereinafter *Addis Ababa Decl.*].

72. See OAU Ministerial Conference on Human Rights, *Report on the Progress Made Towards the Establishment of an African Court on Human and Peoples' Rights*, April 12-16, 1999, Grand Bay, Mauritius; MIN/CONF/HRA/4 (I), at 5 [hereinafter *OAU Min. Conf. on Hum. Rts.*].

73. *Addis Ababa Decl.*, *supra* note 71, para. 2.

74. See *id.*

collective self-reliance, so as to achieve accelerated structural transformation of our economies. Within this context, we are determined to work assiduously towards integration through regional cooperation. We are also determined to take urgent measures to rationalize the existing economic groupings in our continent in order to increase their effectiveness in promoting economic integration and establishing an African Economic Community.<sup>75</sup>

## 2. *The African Economic Community Treaty*

At its 27th Ordinary Session, held in Abuja, Nigeria, from June 3 – 5, 1991, the OAU adopted the AEC Treaty as “an integral part of the OAU”<sup>76</sup> to create an African Economic Community by 2025.<sup>77</sup> Its adoption achieved the pinnacle of the LPA and also brought to fruition the long debated idea that the economic integration of Africa is a *sine qua non* for the development of the continent. The key elements of the AEC Treaty include, *inter alia*, the promotion of economic, social and cultural development and the integration of African economies in order to increase economic self-reliance and indigenous and self-sustaining development.<sup>78</sup> Others are the establishment of a framework for the development, mobilization, and utilization of the human and material resources of Africa; the promotion of co-operation in all fields of human endeavor in order to raise the standard of living of the African people and maintain and enhance economic stability in order to achieve self-reliant development.<sup>79</sup>

These aims are to be achieved in-part by the liberalization of trade through the abolition of customs duties on imports and exports and non-tariff barriers in order to establish a free trade area; the adoption of a common trade policy *vis-à-vis* third States; and the harmonization of national policies in agriculture, industry, transport and communications, energy, trade, money and finance, and science and technology.<sup>80</sup> Others are the establishment of a common external tariff; the removal of obstacles to the free movement of

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75. *Id.* para. 8.

76. *AEC Treaty*, *supra* note 51, pmbl. para. 12 and *id.* art. 98(1).

77. See generally Gino J. Naldi & Konstantinos D. Magliveras, *The African Economic Community: Emancipation for African States or Yet Another Glorious Failure*, 24 N.C. J. INT'L & COM. REG. 601 (1999); NALDI, *supra* note 51, at 240; Yinka Omorogbe, *Economic Integration and African National Development*, 7 ASICL PROC. 279 (1995); Bela Thompson, *Economic Integration Efforts in Africa*, 5 RADIC 743 (1993); Muna Ndulo, *Harmonisation of Trade Laws in the African Economic Community*, 42 I.C.L.Q. 101 (1993); MICHAEL A. AJOMO & OMOBOLAJI ADEWALE, *AFRICAN ECONOMIC COMMUNITY TREATY: ISSUES, PROBLEMS AND PROSPECTS* (1993).

78. See *AEC Treaty*, *supra* note 51, art. 4(1).

79. See *id.*

80. See *id.* art. 2(2); Thompson, *supra* note 77, at 747 – 8.

persons, goods, services and capital, and the right of residence and establishment; and the establishment of a common market.<sup>81</sup> The AEC Treaty established modalities for establishing the AEC that, like the EU, was to lead to a political union and, like the LPA, anticipated the AU Treaty.

Classical international economic law recognizes four levels of economic integration.<sup>82</sup> The first and lowest level is a free trade area, which provides for the free movement of goods and services and a minimal amount of policy harmonization.<sup>83</sup> It is at this level that distortions caused by different trade regimes are dealt with by rules of origin. The next level is the customs union.<sup>84</sup> This level supplements the free trade area with a common external tariff, thereby obviating the need for rules of origin. The third level is the common market, an area in which there is free movement of goods, services, persons and capital together with a significant degree of policy harmonization.<sup>85</sup> Last, but by no means least, is the economic and monetary union, which can exist on its own or alongside a common market.<sup>86</sup>

In contrast, the AEC Treaty provides for six levels or stages of integration of variable duration over a transition period not exceeding thirty-four years, which began in May 1994—the date of entry into force of the Treaty.<sup>87</sup> The first stage, which is to last five years, involves the strengthening of existing Regional Economic Communities (RECs) and establishing new ones in regions where they do not exist.<sup>88</sup> The second stage of eight years involves, at the level of each REC, refraining from establishing tariff and non-tariff barriers, customs duties and internal taxes at the May 1994 level; and determination of the time table for the gradual liberalization of regional and intra-community trade; the harmonization of customs duties *vis-a-vis* third states;<sup>89</sup> the strengthening of sectoral integration, particularly in the fields of trade, agriculture, money and finance, transport and communications, industry and energy; and coordination and harmonization of the activities of RECs.

The third stage, lasting ten years, involves the establishment of Free Trade Area and a Customs Union at the level of each REC.<sup>90</sup> The fourth stage, lasting two years, involves the coordination and harmonization of tariff and

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81. *See id.*

82. *See* RAWORTH, *supra* note 12, at 28; *see generally* BELA BALASSA, *THE THEORY OF ECONOMIC INTEGRATION* (1973).

83. *See* RAWORTH, *supra* note 12, at 28.

84. *See id.*

85. *See id.*

86. *See id.*

87. *See* AEC Treaty, *supra* note 51, art. 28. Significantly, the AEC Treaty entered into force ahead of the time schedule envisaged by the LPA, which was the year 2000. *See generally id.*

88. *See id.* "During the first stage, Member States undertake to strengthen the existing regional economic communities and to establish new communities where they do not exist in order to ensure the gradual establishment of the community." *Id.*

89. *See id.* art. 30(1).

90. *See id.*

non-tariff barriers among various RECs with a view to establishing a Continental Customs Union.<sup>91</sup> The fifth stage, lasting four years, is the establishment of an African Common Market (ACM); while the sixth stage, lasting five years, involves the consolidation and strengthening of the structures of the ACM, including free movement of peoples and factors of production; creation of a single domestic market and Pan African Economic and Monetary Union, African Central Bank and African Currency; and the establishment of a Pan African Parliament.<sup>92</sup>

The AEC Treaty also envisages the creation and rationalization of regional training and capacity-building centers in Africa.<sup>93</sup> It provides that: "Member States shall strengthen cooperation among themselves in the field of education and training and coordinate and harmonize their policies in this field for the purpose of training persons capable of fostering the changes necessary for enhancing social progress and the development of the Continent."<sup>94</sup>

A Protocol on Relations between the AEC and the RECs was concluded and signed in February 1998,<sup>95</sup> seeking to bring the operation of the RECs under the umbrella of the AEC. On the one hand, the protocol will serve as an efficient instrument and framework for close cooperation, program harmonization and coordination, as well as horizontal integration among the RECs, and as a vertical link between the AEC and the RECs, on the other.<sup>96</sup> It is necessary, at this point, to highlight the activities of some of these RECs.

### 3. *The Regional Economic Communities (RECs)*

Many RECs have sprung up in Africa over the last four or so decades. Fourteen of them have presently been identified, all of them of varying degrees of design, scope, and objectives. These are the Arab Maghreb Union (AMU), with five members; the Common Market for Eastern and Southern Africa (COMESA), with twenty members; the Economic Community of Central African States (ECCAS), with ten members; the Economic Community of West African States (ECOWAS), with fifteen members; the Southern African Development Community (SADC), with fourteen members; the Inter-

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91. *See id.* art 32.

92. *See generally id.* chs. IV, V, & VI.

93. *See AEC Treaty, supra* note 51, art. 68(2).

94. *Id.* art. 68(1).

95. *See Protocol on the Relationship between the African Economic Community and the Regional Economic Communities* 1998, 10 RADIC 157 (1998) [hereinafter *AEC Prot. on RECs*]. The Protocol has been signed by COMESA, SADC, IGAD and ECOWAS. *See id.* ECCAS/CEEAC signed it in October 1999, but AMU/UMA is yet to sign. *See id.; see also* AEC Foreign Relation, available at <http://www.dfa.gov.za/for-relations/multilateral/aec.htm> (last visited Oct. 15, 2002).

96. *See AEC Treaty, supra* note 51, art. 28(3). The Secretary-General of the AEC is a full participant in the meetings and deliberations of the RECs. *See id.; see also AEC Prot. on RECs, supra* note 95, arts. 20(1) and 23.

Governmental Authority on Development (IGAD), with seven members; and the Community of Sahel-Saharan States (CEN-SAD), with eighteen members.<sup>97</sup> Others include: the West African Economic and Monetary Union (UMEOA), with eight members; the Mano River Union (MRU), with three members; the Central African Economic and Monetary Community (CEMAC), with six members; The Economic Community of Great Lakes Countries (CEPGL), with three members; The East African Community (EAC), with three members; the Indian Ocean Commission (IOC), with five members; and the Southern African Customs Union (SACU), with five members.<sup>98</sup> Only a few will be highlighted here.

The political leaders of West Africa, for example, established the ECOWAS in May 1975,<sup>99</sup> as a regional economic grouping to foster economic development of the sub-region. In the revised Treaty of 1993,<sup>100</sup> ECOWAS objectives are stated as, *inter alia*, "to promote co-operation and integration, leading to the establishment of an economic union . . . in order to raise the living standards of its peoples, and to maintain and enhance economic stability, foster relations among Member States and contribute to the progress and development of the African Continent."<sup>101</sup> This clearly shows that ECOWAS objectives extend beyond trade to cooperation in almost all the key sectors of the respective economies of the Member States.<sup>102</sup>

The creation of ECOWAS was a significant step in regional integration, as it was the first time in Africa that an organization was established that cuts across divisions of language,<sup>103</sup> history and existing affiliations and institutions.<sup>104</sup> Over the years, the ECOWAS has made strenuous efforts to develop proper communications and transport facilities within its area. Two Conventions were signed in May 1982 on the establishment of Interstate Road Transport and Interstate Road Transit. The same Conventions relate to free movement of persons, which was intended to remove the many administrative barriers between Member States and facilitate economic and social intercourse among the various peoples of the sub-region. Although initially designed as a sub-regional organization for the pursuit of economic and social goals, the

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97. See ECA ANNUAL REPORT, *supra* note 26, at 5. The report identifies fourteen RECs, including the first seven that "dominate the integration landscape." *Id.*

98. *See id.*

99. ECOWAS Treaty, 35 I.L.M. 35 (1996); *see generally* Sunday Babalola Ajulo, *Temporal Scope of ECOWAS and AEC Treaties: A Case for African Economic Integration*, 8 RADIC 111 (1996).

100. *See* 35 I.L.M. 660 (1996) [hereinafter *Revised ECOWAS Treaty*].

101. *Id.* art. 3(1).

102. *See* S.K.B. ASANTE, REGIONALISM AND AFRICA'S DEVELOPMENT: EXPECTATIONS, REALITY AND CHALLENGES 45-46 (1997).

103. *See* Kessie, *supra* note 24, at 34. Of its sixteen Member States, eight are officially French-speaking (Francophone); five are English-speaking (Anglophone); two are Portuguese-speaking (Lusophone); while one is Arabic-speaking. *See id.*

104. *See id.*



ECOWAS has also gradually extended its mandate to include Mutual Assistance on Defense.<sup>105</sup>

Similarly, the COMESA<sup>106</sup> was created "within the ambit of the broader ideals of the creation of an African Economic Community"<sup>107</sup> to enhance economic development in the Eastern and Southern African region. Its Treaty, entered into force on December 8, 1994, thus fulfilling the requirements of the Preferential Trade Area (PTA) for East and Southern Africa Treaty<sup>108</sup> providing for the transformation of the PTA into a common market ten years after its entry into force. The scope of the COMESA is very broad, stretching from Angola to Eritrea and the Comoros.

There is also the SADC,<sup>109</sup> which is aimed at regional peace and security, cooperation in a number of sectors, and integrating regional economies.<sup>110</sup> In its preamble, the SADC Treaty actually provides that the Southern African States, in establishing the SADC, took into account the LPA and the AEC Treaty. On June 28, 1996, an SADC organization on politics, defense, and security was launched to coordinate the member's policies in this area.<sup>111</sup>

The understanding in the AEC Treaty was that the establishment of the AEC was the final objective towards which the activities of the existing and future RECs will be geared.<sup>112</sup> So far, the AEC has established direct working relations with the ECOWAS in the West African region, the ECCAS in the Central region, and the COMESA in the East and Southern regions, beside its dealings with the SADC. However, at this point, the UMA has no direct contact with the AEC.<sup>113</sup>

105. See *ECOWAS Protocol Relating to Mutual Defense Assistance on Defense 29 May 1981*, reprinted in MARC WELLER, *REGIONAL PEACE-KEEPING AND INTERNATIONAL ENFORCEMENT: THE LIBERIAN CRISIS* (1994).

106. COMESA, 33 I.L.M. 1067 (1994).

107. Frans Viljoen, *The Realisation of Human Rights in Africa through Sub-Regional Institutions*, AFR. YRBK INT'L L 185, 206 (2001).

108. 21 I.L.M. 479 (1982). Signed on Dec. 21, 1981, by the representatives of Comoros, Djibouti, Ethiopia, Kenya, Malawi, Mauritius, Somalia, Uganda, and Zambia. See *id.* The aims of the PTA are to promote cooperation and development in the fields of trade, customs, industry, transport, communications, agriculture, natural resources, and monetary affairs, with a view to the establishment of an economic community for the sub-region and to contribute to the achievement of the African common market envisaged by the LPA. See *id.*

109. SADC Treaty, 32 I.L.M. 116 (1993). The treaty was established following the *Southern African Toward Economic Liberation*, a Declaration by the Governments of Independent States of Southern Africa, made at Lusaka, April 1, 1980. See *id.*

110. See generally Kenneth Kaoma Mwenda, *Legal Aspects of Regional Integration: COMESA and SADC on the Regulation of Foreign Investment in Southern and Eastern Africa*, 9 RADIC 324 (1997).

111. See *id.*

112. See E. B. Akpan, *Joint Mission to the Regional Economic Communities (RECs)*, 2(1) AEC NEWSLETTER 3 (Nov. 1997 – Jan. 1998).

113. See OAU, *The African Economic Community*, available at <http://www.oau-oua.org/document/documents/AEC.htm> (last visited Aug. 15, 2002).

### C. Enterprise and Failure

The assumed benefits of integration notwithstanding, the experience in Africa has thus far been negative. It has been a story of unrealized possibilities; the final hope has been flat despair, due to a variety of reasons.<sup>114</sup> To start with, African leaders lack the certitude to face the challenges of integration. Integration requires that each constituent party have clearly defined national plans and strategies to achieve economic development. Such plans are lacking in the continent. Like a child in a toyshop, most leaders in Africa do not know which way to look. They have been unable to make the changes that will sustain growth and development.<sup>115</sup> Others are not prepared to subordinate immediate national political interests to long-term regional economic goals or to cede essential elements of sovereignty to regional institutions.<sup>116</sup>

Integration in Africa is based on "lofty transcontinental ambitions, evocative political slogans, a plethora of treaties and regional institutions, high-minded principles, and protectionist proclivities."<sup>117</sup> Member States formulate grandiose policies at the continental level and then retreat into their domestic bunkers, leaving the policies to atrophy. Lessons are quickly forgotten, mistakes are repeated, and follow-through is lacking. Thus, the General Confession in *The Book of Common Prayer* has been their lot: "We have left undone those things which we ought to have done; And we have done those things which we ought not to have done; and there is no health in us."<sup>118</sup> Policy reversals and economic retrogression are the norms in Africa. Each succeeding Government starts by dismantling the economic policies of its predecessor that may have been laboriously put together. It then lays its own economic foundation that it might not finish constructing before another Government takes over. And so the cycle and corresponding break upon economic progress continues.

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114. See generally REGIONALISATION IN AFRICA: INTEGRATION AND DISINTEGRATION (DANIEL E. BACH, ed., 1999). The thrust of these collections is that while many world regions are responding to the economic challenges of globalization by strengthening regional ties, the scope and operations and scale of accomplishments of regional organizations in Africa have been more limited. See *id.* Many of the authors emphasize the inability of some African governments to maintain the functions associated with national sovereignty throughout their territories, such that maintenance of the rule of law, the regulation of borders, and the provision of services are uneven. See *id.*; see also Clements, *supra* note 66, at 296.

115. See Malcolm F. McPherson and Arthur A. Goldsmith, *Africa: On the Move?*, 28 SAIS REV. 153 (1998).

116. See ECA ANNUAL REPORT, *supra* note 26, at 8.

117. Mistry, *supra* note 11, at 554.

118. United Church of England, BOOK OF COMMON PRAYER 10 (William S. Peterson, ed., 2002), available at <http://www.inform.umd.edu/ENGL/englfac/WPeterson/ELR/bcp--1662--abridged-x.pdf> (last visited Nov. 4, 2002).

The devastations of conflicts and the ravages of corruption that drain the state and sap individual endeavors have further clouded the vision of integration. In Nigeria, for example,

recurrent social conflicts, particularly between religious groups, have diverted resources from productive uses to the containment of conflict and post-conflict reconstruction and have also led to inefficient choices in public and private investment management. Ethnicity continues to strongly influence budgetary allocations and plays a significant part in the mismanagement of public revenue.<sup>119</sup>

Meanwhile, Zimbabwe's economic outlook is said to be gloomy, largely due to the pervasiveness of corruption in high and low places.<sup>120</sup> In other countries, like South Africa and, again, Nigeria, personal security is threatened even in central locations, making it difficult for flourishing markets and vibrant social interaction. Instability and shrinking markets, consequently, have led private investors to view Africa as a last resort rather than the "last frontier."<sup>121</sup>

The historiography of regionalism has been mainly state-centric, confined to a narrow coterie of political leaders and senior technocrats, with limited attention given to the role of non-state actors that play key roles in the political economy of Africa.<sup>122</sup> Governments and public enterprises have crowded out private enterprise as their policies conspire against a higher degree of private sector-driven regional integration. This results in low levels of intra-regional as well as inter-regional trade, compounded by the existence of customs duties and barriers to trade—roadblocks and constraints on payment, investment and movement of persons. Most traders seeking to transport goods legally from one African country to another face a long wait at the border and stiff legal and/or extra-legal costs.

Another factor militating against integration in Africa is the existence of multiplicity of inconvertible currencies. The exchange of the existing currencies, via global currencies—notably the dollar and euro—fragments Africa and integrates discrete interests and regions with the world economy.<sup>123</sup>

119. Economic Commission for Africa, *Economic Report on Africa 2002: Tracking Performance and Progress* 172 (2002) [hereinafter *ECA Report 2002*] (laying out an agenda for Africa based on systematic benchmarking of economic performance).

120. See *id.* at 133 (reporting, e.g., that "[m]isuse of resources in the government and in state-run companies cost [Zimbabwe] close to \$800 million in 1999–2001").

121. James Duesenberry et al., *Restarting and Sustaining Growth and Development in Africa*, African Economic Policy Discussion Paper No. 28, Jan. 2000, at 16.

122. See Emmanuel Obuah, in 39(1) J. MOD. AFR. STUD. 168, 169 (2001).

123. See Mammo Muchie, *Wanted, African Monetary Union*, NEW AFRICAN, April 2002, at 32 (arguing also for the establishment of a dual currency system that can self-finance an integrated African development). One, which he calls the "people's currency," will be used for

The manufacturing sector is also weak. This is a problem compounded by the upheavals in the international system since the end of the Cold War, notably globalization. Closed regimes are not willing to reveal themselves to scrutiny. Many states fall foul in paying monies due to regional schemes and there is no hegemonic leadership capable of using coercive measures to ensure compliance by Member States. There are also no monitoring mechanisms to ensure adherence to agreed timetables for such matters as tariff and non-tariff barrier reductions, not to mention more difficult objectives, such as macro-economic stabilization.<sup>124</sup>

Another problem is the manifest dissimilarities among African countries in the areas of politics, culture, and economics. The idea of integration looks like the marriage of two incompatible couples. Cooperation among the French-speaking African States appears to be reasonably on course. This is largely due to their common colonial, language and cultural backgrounds, providing strong links across territorial boundaries. The operation of the French Technical Assistance has additionally boosted cooperation between these states. The same cannot, however, be said of the rest of Africa. For example, most countries in North Africa consider themselves to be either part of Europe or the Middle East.<sup>125</sup> Those in sub-Saharan West Africa have a lot of common interest, as do the people of Eastern and Southern Africa.

Libyan foreign policy relations with the other Arab states of Northern Africa have always taken precedence over the country's goals in sub-Saharan Africa. Mauritania is not ready to give up its own currency, the Ouguiya and has recently pulled out of the sub-regional ECOWAS, citing its opposition to the Organization's decision to establish a common currency by 2004 as one of its reasons.<sup>126</sup> It has, however, been observed that Mauritania's main problem is that it has no intention to integrate or have an open border policy with black

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the domestic economy. *Id.* This should be inconvertible and should be used to finance education, health, housing and infrastructure and foster inter-African linkages. *Id.* Meanwhile, "the existing state currencies that are not exchanged directly with each other, and whose exchange rate is mediated with the dollar or the euro, should give way to direct exchanges based on a fair settlement of the appropriate par value." *Id.*

124. See Mistry, *supra* note 11, at 554.

125. See Jerry Gbardy, *What to Make of the New African Union?* THE PERSPECTIVE, July 18, 2001, available at <http://www.theperspective.org/africanunion.html> (last visited Aug 15, 2002).

126. The Heads of States of six countries in West Africa, as part of the fast-track approach to integration, decided in Accra, Ghana, April 20, 2000, to establish a second monetary zone to be known as the West African Monetary Zone (WAMZ) by the year 2003. These countries—Gambia, Ghana, Guinea, Liberia, Nigeria, and Sierra Leone—signed the "Accra Declaration," which defined the objectives of the Zone, an action plan and institutional arrangements to ensure the speedy implementation of their decision. It is envisaged that this Zone will be merged with the CFA Franc Zone to form a single monetary zone in West Africa by the year 2004. See Toye Olori, *West Africa Moving Closer to a Common Currency*, May 28, 2002, available at <http://www.proutworld.org/news/en/2002/may/20020529wes.htm> (last visited Oct. 31, 2002) (reporting that ECOWAS has put in motion programs aimed at ensuring the take-off of its long-muted common currency, the Eco, for the sub-region).

Africa, as the country suffers from a serious identity crisis, resulting in the denial of its African identity to bend over toward the Arab World.<sup>127</sup>

Like the LPA, the AEC Treaty appeared from the start to be an over-ambitious project, given the OAU's pathetic record in respecting and implementing the substance of previous agreements.<sup>128</sup> Success stories for existing RECs seem inconsistent, unsustained, and scarce. Others have not met their objectives, largely due to Africa's shrinking economies and shares in global trade.<sup>129</sup>

Overlapping memberships of the RECs have additionally worked against the overall objective of a continental union. Presently, all members of the UMEOA and of MRU are also members of the ECOWAS. States Parties to the CEMAC and CEPGL are also members of the ECCAS. Members of the EAC and IOC are also members of the SADC, while all States Parties to the SACU belong to SADC and two to COMESA.<sup>130</sup> The overlap in membership between the SADC and the COMESA is more pronounced than in other RECs.<sup>131</sup> Overall, of the fifty-three African countries, twenty-seven are members of two RECs; eighteen others are members of three RECs; while the DR Congo is a member of four. Only seven countries belong to one REC.<sup>132</sup> Their logic, faulty as it seems, is to run their integration race on multiple tracks, not minding the truth that a house divided against itself cannot stand. Besides, there are situations where potential conflicts may arise regarding which organization's obligations should take precedence.

All this appears to be in sharp contrast with the experiences in other parts of the globe. Thus, "[u]nlike economic integration in other parts of the world—in Europe (the EU), North America (NAFTA), and South America (MERCOSUR)—the African RECs have not accelerated growth or even trade."<sup>133</sup> It is not as if norms are lacking in Africa; the problem is in the area of implementation. For example, compared to Europe, Africa's integration policies are fundamentally different exactly where they are superficially similar. As previously pointed out, economic prosperity (activity) lies in the heart of the European Union.<sup>134</sup> Member States strive to improve each other's economy by encouraging trade, investment, and economic competition, while

127. See Garba Diallo, *Mauritania—Neither Arab nor African*, 2 NEWS FROM THE NORDIC AFRICA INST. 5 (2000).

128. See ECA ANNUAL REPORT, *supra* note 26, at 4.

129. See *id.*

130. See *id.* at 6.

131. See Matthew Heiman, *The Drive Towards Regionalisation in Southern Africa: Fictional Reality*, 9 RADIC 269 (1997). The states that are members of both organizations include Angola, Malawi, Mauritius, Mozambique, Namibia, Swaziland, Tanzania, Zambia, and Zimbabwe. See *id.*

132. See ECA ANNUAL REPORT, *supra* note 26, at 6.

133. *Id.* at 7.

134. See Ali El-Agraa, *Integration in Other Regions: Lessons for the AU from the EU!*, available at [http://www.uneca.org/eca\\_resources/speeches](http://www.uneca.org/eca_resources/speeches) (last visited Aug. 15, 2002).

citizens of Member States live and work anywhere in the Union, free of hassle.<sup>135</sup>

The result of all this is a continent that is the most laggard in the multilateral trading system. Its economy is declining and increasingly losing its place in the global economy, as its share of world trade has fallen.<sup>136</sup> Greater economic integration at the global level has led to the further marginalization of those countries that are unable to compete effectively. Thus, the inability of African states to effectively integrate, coupled with bad governance, has resulted in a record of economic and political performance that compares very unfavorably with the rest of the developed world. It has also impeded the effective mobilization and utilization of scarce resources into productive areas of activity in order to attract and facilitate domestic and foreign investment.

It is important to bear these fault lines in mind if the current experiment is to lead the continent to its promised land of prosperity and sustainable development. It is within this context we must now examine the AU Treaty and NEPAD.

### III. 'WHAT'S UP' IN THE AU TREATY AND NEPAD?

#### A. *The AU Treaty*

##### 1. *Background*

The groundwork for the AU Treaty started in July 1999, during the 35th OAU summit in Algiers, Algeria where Libyan leader, Colonel Muammar Ghaddafi proposed the formation of the United States of Africa. Ghaddafi was quoted to have openly said that "[t]he 50 states [now 53,] which currently make up Africa have a short-lived existence, and I repeat, short-lived. Consequently we must establish a unified African state, which itself will last forever."<sup>137</sup> Later, on March 18, 2001, in an address carried on Libyan television, Ghaddafi explained his vision thus:

[I]n the coming years, there will be changes towards further African integration. Boundaries between African states will be scrapped. Armies, with their heavy burden on the national state, will be made redundant and replaced by one African

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135. See generally JOHN PINDER, *EUROPEAN COMMUNITY: THE BUILDING OF A UNION* (1995).

136. See, e.g., *Yaounde Decl.*, *supra* note 1, pmbl. para. 6; see also *UN Seminar on the Effects of the Existing Unjust International Economic Order on the Economies of the Developing Countries and the Obstacle that this Represents for the Implementation of Human Rights and Fundamental Freedoms*, Geneva, June 30 - July 11, 1980; ST/HR/SER.A/8.

137. Jonathan Derrick, *Towards the African Union*, *AFRICAN TOPICS* 4 (Nov. - Dec. 1999).

defence [sic] force. Even passports and national identities will inevitably disappear. From now on, national differences will give way to a single African identity, with a single currency, one central bank, a single passport and a joint defence force.<sup>138</sup>

Ghaddafi was really not the first to make such a call. The concept of pan-Africanism or African unity was, itself, a highly motivating factor towards the founding of the OAU; indeed, the underlying philosophy of the OAU was to promote inter-African co-operation in the fields of economics, culture, science, and technology.<sup>139</sup> At that time, Dr. Kwame Nkrumah of Ghana also called for rapid progress towards a politically united Africa, predicting that Africa must either unite or perish.<sup>140</sup> If Africa fails to unite, Nkrumah warned, it would make it possible for others more powerful than the newly independent states to swoop on each one of them.<sup>141</sup> During the founding OAU summit, Nkrumah also called for "a political union based on Defence [sic], Foreign Affairs and Diplomacy, and a Common citizenship, an African Currency, an African Monetary Zone and an African Central Bank."<sup>142</sup> However, his ideas were rejected by most of his contemporaries, particularly from what has now come to be regarded as the moderate Brazzaville and Monrovia Groups,<sup>143</sup> as opposed to the radical Casablanca Group that Nkrumah led.<sup>144</sup>

Tragically, what Nkrumah feared has come upon Africa. As this paper has attempted to show, Africa is sliding down the slope of underdevelopment, while the rest of the world is undergoing far-reaching economic and political transformations. The continent has not been able to point to any significant

138. Jakkie Cilliers, *Commentary: Towards the African Union*, 10(2) AFRICAN SECURITY REV. (2001), available at <http://www.iss.co.za/Pubs/ASR/10No2/Cilliers.html> (last visited Sept. 15, 2002).

139. See generally OAU Charter, *supra* note 3, art. II.

140. See KWAME NKUMAH, AFRICA MUST UNITE (1963).

141. See *id.*; see also Julius Nyerere, *A United States of Africa*, 1 J. MOD. AFRIC. STUD. 1 (1963).

142. Derrick, *supra* note 137, at 5.

143. See NALDI, *supra* note 51, at 2. The Brazzaville Group represented a gradualist approach to African unity and advocated a loose association of states. See *id.* It was composed of Cameroon, Central African Republic, Chad, Congo Brazzaville, Cote d'Ivoire, Dahomey (now Benin), Gabon, Mauritania, Madagascar, Niger, Senegal, and Upper Volta (now Burkina Faso). See *id.* This group later metamorphosed into the Monrovia group, with the addition of seven other States—Liberia, Togo, Ethiopia, Libya, Nigeria, Sierra Leone, and Somalia. See *id.* It sought unity of aspirations and of action based on African social solidarity and political identity, urging co-operation in the economic, cultural, scientific and technical fields. See *id.*; see generally C.O.C. AMATE, INSIDE THE OAU: PAN-AFRICANISM IN PRACTICE 46 *et seq.* (1986); C. MUNHAMU BOTSIO UTETE, AFRICAN INTERNATIONAL RELATIONS ch. 5 (1985); MICHAEL WOLFERS, POLITICS IN THE ORGANISATION OF AFRICAN UNITY (1976).

144. The Casablanca Group was composed of Ghana, Guinea, Mali, Morocco, United Arab Republic (now Egypt), and the Provisional Government of Algeria. This group sought a political union and the creation of a United States of Africa along federal lines under a High Command. See *id.*

growth rate or satisfactory index of general well being in the past two or three decades.<sup>145</sup> On the contrary, there is everywhere evidence of degradation:

[T]he entire African economy is declining and increasingly losing its place in the global economy. Cooperation and regional economic integration are marking time, while official development assistance is decreasing and the external debt burden is becoming heavier. Also, capital flight is coupled with real brain-drain which, each year, strip Africa of tens of thousands of its sons and daughters, professors, scientists and other highly qualified human resources, which escape to the North as the continent progressively loses its cultural identity in the face of dominant foreign cultures.<sup>146</sup>

The challenges facing African countries "due to the current economic situation, globalization and technological changes as well as the increased risks of unemployment, underemployment and the resulting social exclusion"<sup>147</sup> have necessitated the need for home-grown solutions to Africa's problems. The socio-economic context of the Union, thus, emanated from the desire of African leaders to face up to the present challenges of globalization and regional integration. In the face of increasing globalization, the leaders saw the necessity to reflect on appropriate strategies. That search for original solution for Africa led to the revision of the objectives, mandate and mode of functioning of the OAU and to reorient the parameters to addressing the present challenges.

Before the AU Treaty, however, the OAU first adopted the Sirte Declaration in September 1999<sup>148</sup> at its 4th Extraordinary Session, after receiving inspiration from

the important proposals submitted by Colonel Muammar Ghaddafi, Leader of the Great Al Fatah Libyan Revolution and particularly, by his vision for a strong and united Africa, capable of meeting global challenges and shouldering its responsibility to harness the human and natural resources of the continent in order to improve the living conditions of its peoples.<sup>149</sup>

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145. See LAGOS PLAN OF ACTION, *supra* note 50, at 5.

146. *Yaounde Decl.*, *supra* note 1, para. 6.

147. OAU, *Decision on the Holding of a Ministerial Meeting on Employment and Poverty Control in Africa*, AHG/Dec. 166 (XXXVII), para. 3 (2001).

148. See OAU, *Sirte Declaration*, EAHG/Decl. (IV) Rev.1 [hereinafter *Sirte Decl.*].

149. *Id.* para. 7.



The Assembly of the OAU then mandated the Council of Ministers "to take the necessary measures to ensure the implementation of the above decisions and in particular, to prepare the constitutive legal text of the Union"<sup>150</sup> and to submit it to the OAU's next annual meeting—the July meeting in which the Treaty was adopted. There were two opposing views on the nature of the Union. The first draft of the Treaty, for example, provided for the Union to coexist with the OAU and the AEC—"an evolutionary process which would culminate into the fusion of the OAU and the AEC" into one institution.<sup>151</sup> This idea was finally rejected, because it would have potentially added to the number of African continental organizations rather than serving the purpose of rationalization and consolidation.

## 2. Objectives and Principles

In principle, the AU Treaty is a successful symbolic result of the political will called African Union—the final goal of the African Unity that African leaders have pursued for several years.<sup>152</sup> The Treaty recalls the heroic struggles waged by Africans and their countries for political independence, human dignity and economic emancipation.<sup>153</sup> It eulogizes Africa's determination "to take up the multifaceted challenges that confront our continent and peoples in the light of the social, economic and political changes taking place in the world,"<sup>154</sup> particularly in the face of "the challenges posed by globalization."<sup>155</sup>

African leaders adopted the AU Treaty to establish the AU "in conformity with the ultimate objectives of the Charter of ...[the OAU] and the provisions of the Treaty establishing the African Economic Community."<sup>156</sup> It is "intended to be a transformation of the existing institutional framework into a qualitatively higher form of integration and cooperation that would better meet the aspirations of the peoples of Africa for greater unity and solidarity in line with the vision of the Founding Fathers."<sup>157</sup> The objectives and principles of the Union, which "provide an advanced degree of political

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150. *Id.* para. 8(iii).

151. OAU, *Report of the Second Meeting of Legal Experts and Parliamentarians on the Establishment of the African Union and the Pan-African Parliament*, SIRTE/Exp/Rpt (II), para. 15 [hereinafter *Report of Legal Experts*].

152. See AU Treaty, *supra* note 2, pmbl. para. 1. The AU Treaty is "[i]nspired by the ideals which guided the founding fathers of [the OAU] and the generations of Pan-Africanists in their resolve to forge unity, solidarity, and cohesion as well as cooperation between African peoples and among African States." *Id.*; see also *Sirte Decl.*, *supra* note 148, para. 3.

153. See *id.* pmbl. para. 3.

154. *Id.* pmbl. para. 5.

155. *Id.* pmbl. para. 6.

156. *Sirte Decl.*, *supra* note 148, para. 8(i).

157. *Report of Legal Experts*, *supra* note 151, para. 14.

cooperation,"<sup>158</sup> cover virtually anything that can be put in the same catalogue even if not in the same category. These include: the promotion and defense of African common positions on issues of interest to the continent and its peoples;<sup>159</sup> the promotion of peace, security and stability on the continent;<sup>160</sup> the encouragement of international cooperation, taking due account of the Charter of the United Nations<sup>161</sup> and the Universal Declaration of Human Rights;<sup>162</sup> the promotion and protection of human and peoples' rights, in accordance with the African Charter on Human and Peoples' Rights;<sup>163</sup> and other relevant human rights instruments.<sup>164</sup>

Some objectives of the AU Treaty are at the core of integration. These are the acceleration of the political and socio-economic integration of the continent<sup>165</sup> and the promotion and defense of African common positions on issues of interest to the continent and its people<sup>166</sup>—such as the arguably unjust regime of globalization. Others include: the establishment of the necessary conditions that will enable the continent to play its rightful role in the global economy and in international negotiations;<sup>167</sup> the promotion of sustainable development at the economic, social and cultural levels as well as the integration of African economies;<sup>168</sup> the co-ordination and harmonization of

158. *Report of the Secretary General on the Implementation of the Sirte Decision on the African Union*, (EAHG/DEC.1 (V), CM/2210 (LXXIV), para. 7(b) [hereinafter *Report of the Sec. Gen.*].

159. See AU Treaty, *supra* note 2, art. 3(d).

160. See *id.* art. 3(f); see also art. 4(e) and pmb. para. 8.

161. Charter of the United Nations, adopted June 26, 1945, entered into force Oct. 24, 1945, as amended by G.A. Res. 1991 (XVIII) 17 Dec. 1963, entered into force Aug. 31, 1965 (557 U.N.T.S. 143); 2101 of Dec. 20, 1965, entered into force June 12, 1968 (638 U.N.T.S. 308); and 2847 (XXXVI) of Dec. 20, 1971, entered into force Sept. 24, 1973, (892 U.N.T.S. 119) [hereinafter UN CHARTER]. One of the principal purposes of the organization is "[t]o achieve international cooperation in solving international problems of an economic, social, cultural, and humanitarian character, and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion . . . ." *Id.* art. 1(3).

162. Universal Declaration of Human Rights, adopted Dec. 10, 1948; G.A. Res. 217 A (III), GAOR, 3d Sess. (Resolutions, Part 1), at 71, UN Doc. A/810 (1948), reprinted in 43 A.J.I.L. 127 (Supp. 1949) [hereinafter UDHR].

163. African Charter on Human and Peoples' Rights, adopted June 27, 1981, entry into force Oct. 21, 1986, OAU Doc. OAU/CAB/LEG/67/3/Rev.5 [hereinafter Banjul Charter]. The values underpinning the Banjul Charter, for example, include the notions of community, rights and responsibilities, solidarity and the right to development. See generally CLAUDE E. WELCH, JR. & RONALD I. MELTZER, HUMAN RIGHTS AND DEVELOPMENT IN AFRICA (1984). These values inform and inspire grassroots approaches to human rights. See *id.*

164. See AU Treaty, *supra* note 2, arts 3(c) & (h).

165. See *id.* art. 3(c).

166. See *id.* art. 3(d).

167. See *id.* art. 3(i).

168. See *id.* art. 3(j); The objectives of the Union shall be, *inter alia*, to promote economic and social progress and a high level of employment and to achieve balanced and sustainable development, in particular through the creation of an area without internal frontiers, through the strengthening of economic and

the policies between the existing and future RECs for the gradual attainment of the objectives of the Union;<sup>169</sup> and the advancement of the development of the continent by promoting research in all fields, in particular, science and technology.<sup>170</sup> The last of these objectives will, however, remain a pipe dream as long as African leaders continue to pay mere lip service to education, as they are currently doing. The AU Treaty is also intended to accelerate the implementation of the AEC Treaty which will, in turn, bring about higher social cohesion, economic integration, and political cooperation.<sup>171</sup>

Some of the principles that will propel the Union include human rights, universal values, democracy, and good governance and the rule of law,<sup>172</sup> even though in the context of Africa they are high words bearing semblance of worth, not substance.<sup>173</sup> Africa has been a continent infested with corrupt leaders and brutal governments. Presently, many African countries adopt the language of human rights and democracy with great reluctance.<sup>174</sup> Nevertheless, the rhetoric of democracy is welcome, for empirical record suggests that political corruption, the bane of Africa, is lower under democratic conditions than under arbitrary and non-representative governments.<sup>175</sup>

Other principles include the participation of all sectors of the African society in the activities of the Union,<sup>176</sup> the establishment of a common defense policy for the continent, prohibition of the use of force or threat to use force among Member States,<sup>177</sup> promotion of gender equality,<sup>178</sup> respect for the

monetary union, ultimately including a single currency in accordance with the provisions of this Treaty.

*Id.* art. 2.

169. See AU Treaty, *supra* note 2, art. 3(l).

170. See *id.* art. 3(m).

171. See *id.* pmbl. para. 6 (being “[c]onvinced of the need to accelerate the process of implementing the Treaty establishing the African Economic Community in order to promote the socio-economic development of Africa . . . .”); *Id.* para. 2 (taking cognizance of “the principles and objectives stated in the Charter of the Organisation of African Unity and the Treaty establishing the African Economic Community”); see also *Algiers Declaration*, AHG/Decl. (XXXV) of July 14, 1999, in which the OAU reaffirmed its faith in the AEC. See *id.*

172. See *id.* art. 4(m); see generally JAMES G. MARCH & JOHAN P. OLSEN, *DEMOCRATIC GOVERNANCE* (1995) (advocating an agenda of how individuals and societies can achieve institutions that make politics civil and capable). See *id.*

173. See Nsongurua J. Udombana, *Can the Leopard Change His Spots? The African Union Treaty and Human Rights*, 17(6) AM. UNIV. INT’L L. REV. (2002, forthcoming).

174. See *id.*

175. See, e.g., Arthur A. Goldsmith, *Slapping the Grasping Hand: Correlates of Political Corruption in Emerging Markets*, 58 AM. J. ECON. & SOCIOLOGY (1999), cited in Duesenberry, *supra* note 121, at 6.

176. See AU Treaty, *supra* note 2, art. 4(c).

177. See *id.* art. 4(f); see also UN CHARTER, *supra* note 161, art. 2(4) which provides that “[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.” *Id.*; and the Declaration on Principles of

sanctity of human life, condemnation and rejection of impunity and political assassination, and acts of terrorism and subversive activities.<sup>179</sup> Significantly, the Treaty also provides for the rejection of unconstitutional changes of government,<sup>180</sup> a slogan that started in 1997 during the Harare Summit of the OAU<sup>181</sup> and culminated in the now famous "Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government" in 2000.<sup>182</sup>

Nevertheless, the Treaty enshrines the principles of the sovereign equality and interdependence among Member States,<sup>183</sup> respect of borders existing on achievement of independence,<sup>184</sup> and non-interference by any

International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, *adopted* by the UN General Assembly on Oct. 24, 1970, UN G.A. Res. 2625 (XXV), UN Doc. A/8028 (1971), para. 10.

178. *See id.* art. 4(l).

179. *See id.* art. 4(o).

180. *See id.* art. 4(p).

181. *See* Dec. AHG/Dec.141 (XXXV). The OAU first took a common position on military adventurism at its Harare Summit in 1997 following the *coup d'état* in Sierra Leone. *See id.* The issue was revitalized and expanded during the Algiers Summit meeting in 1999. *See* 1999 OAU Algiers Decisions on Unconstitutional Changes in Government, adopted during the 35th Ordinary Session of the OAU Assembly, in which it unanimously rejected any unconstitutional change as an unacceptable and anachronistic act, which is in contradiction of its commitment to promote democratic principles and conditions.

182. AHG/Dec.5 (XXXVI), July 2000 [hereinafter *Decl. on Unconstitutional Changes of Govt.*]. The declaration proclaims a continent-wide commitment to democracy and attempts to give substance to that commitment by setting out "common values and principles for democratic governance in [African] countries." *Id.* It firmly rejects "unconstitutional change in government" as "an unacceptable and anachronistic act, which is in contradiction of our commitment to promote democratic principles and conditions." *Id.* The declaration sets out four scenarios that would constitute such an unconstitutional change: military *coup d'état* against a democratically elected Government; intervention by mercenaries to replace a democratically elected Government; replacement of democratically elected Governments by armed dissident groups and rebel movements; and refusal by an incumbent government to relinquish power to the winning party after free, fair and regular elections. *See id.* If any of these should occur, then a number of actions are triggered. *See id.* First, the Secretary-General "should immediately and publicly condemn such a change and urge the speedy return to constitutional order." *Id.* Second, he "should also convey a clear and unequivocal warning to the perpetrators of the unconstitutional change that, under no circumstances, will their illegal action be tolerated or recognized by the OAU." *Id.* This appears to be commitment not to seat a delegation sent to the Organization by the usurping regime. *See id.* And, in fact, this is the next step. *See id.* At the request of the Chairman, the Secretary General or any Member State, the OAU Central Organ may be convened to condemn the change. *See id.* A six-month period follows, during which a restoration of constitutional government will hopefully occur. *See id.* The Decl. provides that "during the six month period, the government concerned should be suspended from participating in the Policy Organs of the OAU." *Id.* Finally, if after six months constitutional order has not been restored, "a range of limited and targeted sanctions against the regime that stubbornly refuses to restore constitutional order should be instituted." *Id.* A Sanctions Subcommittee of the General Organ will be established to monitor compliance with its decisions. *See id.* It should be noted that virtually all these steps appear to be mandatory (actions "should" be taken, as opposed to "may"). *See id.*

183. *See* AU Treaty, *supra* note 2, art. 4(a).

184. *See id.* art. 4(b).

Member State in the internal affairs of another.<sup>185</sup> The combination is not accidental. These triune principles have been the foundation stones of the OAU since its inception. The OAU Charter placed great emphasis on the principles of territorial integrity and political independence of African States<sup>186</sup>—the *reserve domain* doctrine—an emphasis that greatly hampered the functionality and effectiveness of the continental body and reduced it to a mere mutual admiration club. The OAU seems to be an organization where not rocking the boat is genetically engineered into its leaders.

The AU Treaty, however, differs from the OAU Charter in that the non-intervention provision is counterbalanced with “the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity.”<sup>187</sup> Nevertheless, it will still be necessary for the AU to further define what is meant by “internal affairs” in Article 4(g) of the AU Treaty, in order to allow for the possibility of regional and international engagement with the security policies of Member States. What constitutes intervention in internal affairs requires a delicate balance between legitimate international concern and a state’s exclusive domain. A matter should be denied the character of internal affairs if it amounts to a breach of international law, a threat to international peace, or a gross violation of human rights and self-determination.<sup>188</sup>

Overall the AU Treaty is seen as a “made in Africa” prescription for Africa’s illnesses, though the prescription is partially based on a diagnosis that is foreign to Africa.<sup>189</sup> The AU is certainly not a United States of Africa, rather, it is a medium for strong cooperation and integrative mechanism of independent African States. The AU is a strategy to deal with other continents on an even keel, particularly as the methods adopted at the world level to settle Africa’s problems do not always meet the requirements of African countries.<sup>190</sup> The AU will also allow Africa to withstand the negative pressures of the

185. See *id.* art. 4(g).

186. See, e.g., OAU Charter, Art. III(2) which declares that “non-interference in the internal affairs of States” is one of the fundamental principles of the Organization. *Id.*; see generally A. Bolaji Akinyemi, *The Organisation of African Unity and the Concept of Non-Interference in Internal Affairs of Member-States*, 46 BRIT. INT’L L. 393, (1972-73); Obi Okongwu, *The OAU Charter and the Principles of Domestic Jurisdiction in Member-States*, 13 INDIAN J. INT’L L. 589 (1973); U. Orji Umozurike, *The Domestic Jurisdiction Clause in the OAU Charter*, 78 AFR. AFFAIRS 197, 202 (1979).

187. AU Treaty, *supra* note 2, art. 4(h).

188. See U. ORJI UMOZURIKE, INTRODUCTION TO INTERNATIONAL LAW 235 (1993).

189. See African Centre for Dem. & Hum. Rts. Studies, *Editorial African Union Established*, 11(2) AFR. HUM. RTS. NEWSL. 1, 13 (2001) [hereinafter HUM. RTS. NEWSLETTER].

190. See *id.*

globalization trend and provide effective remedies and redress to the victims of environmental devastation and uneven development.<sup>191</sup>

## B. *The NEPAD*

### 1. *Background*

It was the thought of a concerted effort for African economic recovery that eventually crystallized into NEPAD, whose origin dates back to 1999, when Presidents Abdelaziz Bouteflika of Algeria, Thabo Mbeki of South Africa, and Olusegun Obasanjo of Nigeria were at the time the Chairmen of the OAU, the Non-Aligned Movement and the G-77 respectively.<sup>192</sup> These leaders seized the opportunity of their unique positions to address the problems of peace and security, as well as poverty and underdevelopment in Africa. Other pioneering leaders of NEPAD were Presidents Hosni Mubarak of Egypt and Abdoulaye Wade of Senegal.<sup>193</sup> The earlier New African Initiative, on which NEPAD is based, was endorsed by the OAU summit in July 2001.<sup>194</sup> On October 23, 2001, NEPAD was launched in Abuja, Nigeria. The OAU/AU provides its overall policy framework.

### 2. *Objectives*

If the AU Treaty is the smoke, then the NEPAD is the flame. NEPAD's main objective is to give impetus to African development by bridging gaps between the continent and the developed world.<sup>195</sup> It is a pledge by African leaders "to eradicate poverty and to place their countries, both individually and collectively, on a path of sustainable growth and development and, at the same time, to participate actively in the world economy and body politic."<sup>196</sup> The document seeks to extricate Africa "from the malaise of underdevelopment and exclusion in a globalizing [sic] world."<sup>197</sup> There is an implicit presumption here—that poverty and backwardness of Africa are the results of "exclusion" and "marginalization" from "globalization." Although this

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191. See Document: *Statement of the International People's Tribunal on Human Rights and the Environment: Sustainable Development in the Context of Globalisation*, 23 ALTERNATIVE 109-47, 118 (Jan. - Mar. 1998); Morne van der Linde, *Globalization and the Right to a Healthy Environment: The South African Experience*, 6(2) E. AFR. J. PEACE & HUM. RTS. 253, 263 (2000). This article discusses the impact of globalization on environmental rights in South Africa. See *id.*

192. See generally L. Aluko-Olokun, *The New Partnership for Africa's Development*, available at [http://www.uneca.org/eca\\_resources/Speeches/2002\\_speeches/030702presentation\\_nepad\\_amb\\_aluko\\_olokun.htm](http://www.uneca.org/eca_resources/Speeches/2002_speeches/030702presentation_nepad_amb_aluko_olokun.htm) (last visited Oct. 13, 2002).

193. See *id.*

194. See *id.*

195. See generally NEPAD, *supra* note 9.

196. *Id.* para. 1.

197. *Id.*

presumption is true, it is not the whole, or even the main, truth. Unity, peace, security, prosperity, integration, and sustainable development have eluded Africa for years due largely to inept, mercenary, and corrupt leadership at both the national and continental levels. This point is even acknowledged in the NEPAD document: "Africa, impoverished by slavery, corruption and economic mismanagement, is taking off in a difficult situation. However, if the continent's enormous natural and human resources are properly harnessed and utilised [sic], it could lead to equitable and sustainable growth, and enhance Africa's rapid integration into the world economy."<sup>198</sup>

NEPAD calls for "a new relationship of partnership between Africa and the international community, especially the highly industrialised [sic] countries, to overcome the development chasm that has widened over centuries of unequal relations."<sup>199</sup> Africa wants to attract foreign investment, not merely aid and loans. Thus, "Africans are appealing neither for the further entrenchment of dependency through aid, nor for marginal concessions."<sup>200</sup> Instead, "[w]e will determine our own destiny. . ."<sup>201</sup> through "bold and imaginative leadership that is genuinely committed to a sustained human development effort and the eradication of poverty" and by harnessing all available capital, technology, and human skills.<sup>202</sup> It is common knowledge that Africa's development trajectory has been deflected by the self-serving colossus known as "[t]he loan and aid industrial complex."<sup>203</sup> It is gratifying that the continent is beginning to realize that at best, aid is like a birthday card: it is only a greeting, not the real gift. As this author stated elsewhere, "[d]evelopment is much more than foreign aid. Aid by its very nature is highly political. Some people mistake it for charity; it is not. It is part of a bargain between the donor and recipient."<sup>204</sup>

Regrettably, in its relationship with Africa, the West is still thinking in terms of aid, not trade. Thus, in his patronizing goodwill message to the Conference on the Financing of NEPAD, in April 2002, George W. Bush promised to "make significant new assistance funds available ... to countries that are decisively walking the often-difficult path of not only governing justly, but also investing in their people's health and education, and promoting

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198. *Id.* para. 52.

199. *Id.* para. 8.

200. *Id.* para. 5.

201. NEPAD, *supra* note 9, para. 7.

202. *Id.* para. 6.

203. Muchie, *supra* note 123, at 32; see also Roger C. Riddel, *The End of Foreign Aid in Africa? Concerns About Donor Policies*, 98(392) AFR. AFFAIRS 309 (1999); Nicolas van de Walle, *Aids Crisis of Legitimacy: Current Proposals and Future Prosperity*, 98(392) AFR. AFFAIRS 337 (1999). Although neither of these authors foresees the ending of aid, both question its value. One doubts the effectiveness of the renewed emphasis put by some donors on its use directly to relieve poverty; the other perceives a 'crisis of legitimacy' in all that so regularly disappoints the expectations vested in it.

204. Nsongurua J. Udombana, *The Third World and the Right to Development: Agenda for the Next Millennium*, 22(3) HUM. RTS. Q. 753, 782-3 (2000).

economic freedom.”<sup>205</sup> It is submitted that Africa’s new seed of partnership with the world will only germinate and bear good fruit when the continent learns to neutralize the harm that “the unholy trinity of loans, aid and debt”<sup>206</sup> has caused over these years. The fear of aid is the beginning of wisdom.

The key success factors of the NEPAD are peace, security, democracy, good political governance,<sup>207</sup> improved economic and corporate governance,<sup>208</sup> and regional cooperation and integration.<sup>209</sup> The peace and security component consists of three elements: promoting long-term conditions for development and security, building the capacity of African institutions for early warning, as well as enhancing their capacity to prevent, manage and resolve conflicts, and institutionalizing commitment to the core values of the NEPAD through leadership.<sup>210</sup> Democracy embodies free and fair elections as well as democratic institutions, respect for human rights, including the rights of women and children, and transparency in public management. Similarly, political governance initiative consists of a series of commitments by participating countries to create or consolidate basic governance and practices, undertaking by participating countries to take the lead in supporting initiatives that foster good governance, and institutionalizing commitments through the leadership of the NEPAD to ensure that the core values of the initiative are followed.<sup>211</sup> Lastly, the objective of the economic and corporate governance initiative is to promote throughout the participating countries a set of concrete and time-bound programs that are aimed at enhancing the quality of economic and public financial management as well as corporate governance,<sup>212</sup> which is critical in a free market-oriented economy.

To achieve these initiatives, NEPAD identifies several priority sectors requiring particular attention and action, including: physical infrastructure, especially roads, railways and power systems linking neighboring countries, information and communications technology, human development, focusing on health and education, including skills development, agriculture, and promoting diversification of production and exports, with a focus on market access for African exports to industrialized countries.<sup>213</sup> Since human resources in particular are important growth factors, African States with no natural resources can harness creativity, inventiveness, and productivity by investing massively in education and training, spurring economic growth.

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205. George W. Bush, *message, in NEPAD, CONFERENCE ON THE FINANCING OF NEPAD*, (Dakar, April 15-17, 2002), *available at* [http://www.nepadsn.org/delivered\\_messages/message\\_whitehouse.pdf](http://www.nepadsn.org/delivered_messages/message_whitehouse.pdf) (last visited Oct. 13, 2002).

206. Muchie, *supra* note 123, at 32.

207. *See NEPAD, supra* note 9, para. 71.

208. *See id.* paras. 86-89.

209. *See id.* para. 91.

210. *See id.* para. 72.

211. *See id.* para. 81.

212. *See id.* para. 88.

213. *See NEPAD, supra* note 9, para. 94.



NEPAD also develops a mechanism of peer review. Known as the African Peer Review Mechanism (APRM), the document will be used by Member States of the AU “for the purpose of self-monitoring”, and is aimed “to foster the adoption of policies, standards and practices that will lead to political stability, high economic growth, sustainable development and accelerated regional integration in the continent.”<sup>214</sup> It is also intended to enhance the capability of states, to increase the effectiveness of aid, to stem policy reversals, and thus to accelerate development. The collective action, mutual learning, and support implicit in such a mechanism can have great benefits, demonstrating to African citizens and the international community that African countries have the political will and commitment to abide by codes and standards that they set for themselves. However, to be credible and effective, the peer review mechanism must be firmly anchored in rigorous monitoring and evaluation of performance.

In general, Africa will need to mobilize more resources, through a combination of African and external efforts. African countries themselves can take steps to increase national savings by firms and households, ensure more effective tax collection, rationalize government expenditures, and reverse the flow of capital flight, in-part by improving the conditions for domestic investments.<sup>215</sup> The international community can assist most immediately by increasing flows of official development assistance, although such aid needs to be significantly reformed, because the way it is currently delivered “itself creates serious problems for developing countries.”<sup>216</sup> Creditors also should provide more debt relief—based on debt sustainability—both for countries qualifying under the Heavily Indebted Poor Countries Initiative and for those outside that debt-relief framework.<sup>217</sup> In addition, more foreign investment is important, but given the current difficulties of attracting private capital flows to Africa, it can only be a longer-term answer to the continent’s resource gap. Whatever helps it can get from external partners, “Africa recognises [sic] that it holds the key to its own development.”<sup>218</sup>

As a way forward, African leaders appealed to all the peoples of Africa in all their diversity to become aware of the seriousness of the situation and the need to mobilize themselves, “in order to put an end to further marginalisation [sic] of the continent and to ensure its development by bridging the gap between Africa and the developed countries.”<sup>219</sup>

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214. *Declaration on the Implementation of the New Partnership for Africa’s Development (NEPAD)*, OAU Assembly of Heads of State and Government, 38th Ord. Sess., Durban, South Africa, July 8, 2002, A/SS/AU/Decl.1(1), para. 6, available at <http://www.africa-union.org/en/commpub.asp?ID=106> (last visited Oct. 27, 2002).

215. See NEPAD, *supra* note 9, paras. 144 – 45.

216. See *id.* para. 183.

217. *Id.* paras. 146 – 47.

218. *Id.* para. 203.

219. *Id.* para. 55.

The next part examines some of the parameters by which integration can be sustained in Africa.

#### IV. TOWARDS A SUCCESSFUL INTEGRATION IN AFRICA

As indicated earlier, most African States have, over the last forty or so years, proved themselves to be economically unviable as independent sovereign entities, despite their considerable natural resource endowments. The Bible considers forty years to be a proper time for wandering in a purifying wilderness—an experience that should dramatically reshape and redirect life. Africa's destination should not, like Augustine's *City of God*, be within comprehension but beyond reach. The AU Treaty has great potential, as it will enable the continent to tackle issues "from a central focal point."<sup>220</sup> Together with NEPAD, the Treaty extends and deepens Africa's regional commitment towards democracy, human rights, sustainable development, and peace and security, and does so with greater vigor and determination than has been witnessed before. It presents a unique opportunity for the organization to re-engineer its strategic policy direction and develop practical programs and projects in Africa, based on partnership strategy, for the immediate and medium terms.<sup>221</sup>

Generally, the issues that should remain on Africa's development agenda include: macroeconomic policies and regulatory environment, well developed and regulated financial and banking system, transparency, development of human resources, and an infrastructure provision as well as its efficient operation and maintenance, adequate legal framework, including enforcement of laws, as well as efficient delivery of public services. Political support for integration has to be solidified, with clear strategic priorities established. And the many overlapping regional economic communities need to be rationalized, both in their structure and in their interaction with national governments.<sup>222</sup>

The AU Treaty, as its contents stand, is not a global program of action. It only defined a general framework that is aimed at taking up the challenges facing the continent. It did not come to abolish or abrogate the AEC Treaty but to fulfill it; it only abolished the OAU Charter. Thus, the adoption of the AU Treaty will certainly necessitate a structural process and content review of the AEC Treaty. This is important, from a legal point of view, in order to ensure a sound legal basis for the AU and respect for its rule of law is maintained. It will also provide for the progression from organizational activities dominated by security and stability crisis situations to a developmental focus and emphasis. These issues are crucial if the ship of

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220. Martha Bakwesegha, *From Unity to Union*, CONFLICT TRENDS 28, 30 (2001).

221. See UN HIGH COMMISSIONER FOR HUMAN RIGHTS, AFRICAN REGIONAL DIALOGUE 1: GENERAL REPORT 7 (2001).

222. See ECA Report 2002, *supra* note 119, at 10.

integration is to carry the continent and anchor it in the promised land of unity, peace, and sustainable development.

It is to some of these parameters that this section now turns.

#### A. Popular Participation and Private Sector Involvement

The AU Treaty romanticized on “the need to build a partnership between governments and all segments of civil society, in particular women, youth and the private sector, in order to strengthen solidarity and cohesion among our peoples.”<sup>223</sup> A similar sentiment was expressed in NEPAD, in which its architects stated “[t]he *New Partnership for Africa's Development* will be successful only if it is owned by the African peoples united in their diversity.”<sup>224</sup> Yet, African leaders deliberately failed to carry out any referendum to obtain the views of the citizens before the adoption of these documents. The movement from the OAU to AU was hardly debated in national legislatures. The OAU simply imposed a superstructure on the people, without their input, thereby raising questions over the legitimacy of the Treaty, if not on its validity.<sup>225</sup> These leaders also unilaterally decided on the processes leading to the formulation of NEPAD. In his prepared speech to the World Economic Forum, Davos, January 2001, Thabo Mbeki, a prime mover of NEPAD, was reported to have said “[i]t is significant that in a sense the first formal briefing on the progress in developing this programme [sic] [NEPAD] is taking place at the World Economic Forum.”<sup>226</sup>

All this appears to be a carry-over from African leader's autocratic rule at the municipal levels, where they impose strange and undemocratic constitutions and laws on the citizens, without their participation in their formulation processes. These leaders cannot run the AU and, *a fortiori*, NEPAD in cultic secesses and expect them to be popular among the citizens. Economic and political integration is inextricably linked with democracy, freedom, and prosperity. Similarly, the history of Pan-Africanism is rooted in civil society and popular struggle; and whatever structures the continent

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223. AU Treaty, *supra* note 2, pmbl. para. 7; see also art. 3(g) which has, as one of its objectives, the promotion of “popular participation and good governance.” *Id.*

224. NEPAD, *supra* note 9, para. 51.

225. See Evod Mmunda, *Debate on Constitutional Reform in Tanzania: Which Way to Effect Democratic Reforms*, paper presented at a workshop on THE PROCESS OF CONSTITUTION-MAKING IN KENYA WITH EXPERIENCES FROM UGANDA AND TANZANIA (Center for Constitutionalism, Nov. 1998). The basis of validity of an instrument is the powers of those implementing it; but the basis of its legitimacy is the way it is accepted by those it is targeting—which is the result of the way they consciously participated or were involved in its promulgation. See *id.* According to Ben Nwabueze, “[t]he legitimacy of a constitution is concerned with how to make it command the loyalty, obedience and confidence of the people . . . .” BEN O. NWABUEZE, *THE PRESIDENTIAL CONSTITUTION OF NIGERIA* 4 (1982).

226. Cited in Patrick Bond, *NEPAD: An Annotate Critique from South Africa*, (April 24, 2002), available at [http://www.web.net/~iccaf/debtsap/nepad\\_aidc.htm](http://www.web.net/~iccaf/debtsap/nepad_aidc.htm) (last visited May 11, 2002).

struggles to put in place must recognize and embody the basic principles of inclusion, participation, freedom, justice, and equity, which cannot be compromised under any circumstances. As the UNDP rightly observed,

effective governance is central to human development, and lasting solutions need to . . . be firmly grounded in democratic politics in the broadest sense. In other words, not democracy as practiced by any particular country or group of countries—but rather a set of principles and core values that allow poor people to gain power through participation while protecting them from arbitrary, unaccountable actions in their lives by governments, multinational corporations and other forces.<sup>227</sup>

Consequently, there must be an increase in the pace of democratic participation of ordinary citizens in the affairs and governance of the continent, since exclusion leads to insecurity. People have to be able to take part in open debates over public policies that affect them. Africans must be involved in designing and, when necessary, redesigning the conditions of their co-existence. They must be part of constructing their “social contract.”<sup>228</sup> That way, there will be a reciprocal pleasure in governing and being governed. The AU project depends on grassroots mobilization. Poverty reduction and increased decentralization require grassroots mobilization, which has a greater impact in the struggle for basic rights, such as health and access to affordable medicine, than when governments act alone.<sup>229</sup> Participation is also necessary to counter arbitrary and non-representative decisions of the leaders and political authorities. Without open access to decision-makers, the majority cannot press its demands; and, lacking pressure from below, leaders and governments are more likely to abuse their positions.<sup>230</sup>

Africa's problems can no longer be dealt with by “specialists and experts” alone, but also by the “man in the street.”<sup>231</sup> Indeed, “uneducated” people are not necessarily irrational people. Mercifully, the leaders have

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227. UNDP, HUMAN DEVELOPMENT REPORT 2002: DEEPENING DEMOCRACY IN A FRAGMENTED WORLD vi (2002) (hereinafter UNDP REPORT 2002) (arguing also that institutions and power should be structured and distributed in a way that gives real voice and space to poor people and creates mechanisms through which the powerful—whether political leaders, corporations or other influential actors—can be held accountable for their actions). See *id.*

228. See Tade Akin Aina, *Reflections on Democracy and Human Rights*, AFR. TOPICS 30 (Jan. – Mar. 2000).

229. See UN HIGH COMMISSIONER FOR HUMAN RIGHTS (UNHCHR), AFRICAN REGIONAL DIALOGUE 1: GENERAL REPORT 14 (2001) [hereinafter UNHCHR GENERAL REPORT].

230. See Duesenberry, *supra* note 121, at 6.

231. See generally Robert A. Dahl, *A Democratic Dilemma: System Effectiveness versus Citizen Participation*, 109 POL. SCI. Q. 23 (1994).

acknowledged the painful experiences of the past<sup>232</sup>—which was characterized by the neglect of real consultation with, and full involvement of, the people. In the absence of such involvement, all the many regional bodies will continue to be private clubs of the ruling elites. It is unfair to expect the citizens to take seriously a document that may have been elaborated with collusion with multilateral corporations only.

The private sector should be challenged to make meaningful contributions to the integration effort, such as economic development, job-creation, business innovation, and technological advancement. The role of a government in modern market-oriented economic integration processes is that of a facilitator, while the actors are private sectors and civil societies.<sup>233</sup> As a vehicle of growth, the private sector should be the driving force in cross-border investment and in the production of goods and non-infrastructure services. But the domestic and international conditions must be conducive. Private sector activity and investment are influenced not only by what individual countries do but also by developments within a particular region.<sup>234</sup> Making policy pronouncements about private sector development is one thing; effectively implementing the policies and effecting the institutional arrangements that are conducive for private sector development is another.

It is gratifying, even if belatedly, that the OAU has recently stressed “the importance of involving African non-governmental organizations, socio-economic organizations, professional associations, and civil society organizations in general in Africa’s integration process as well as in the formulation and implementation of programmes [sic] of the African Union.”<sup>235</sup> Similarly, NEPAD has promised to establish and nurture Public-Private sector Partnership (PPP) and to “grant concessions towards the construction, development and maintenance of ports, roads, railways and maritime transportation.”<sup>236</sup> Thereafter, the leaders will give priority to the implementation of a PPP capacity building program through the African Development Bank and other regional development institutions. Such a program, according to NEPAD, will assist national and sub-national governments in structuring and regulating transactions in the provision of infrastructural and social services.<sup>237</sup> It is one thing to express the problem with exceptional clarity; it is quite another to act upon it. What is important is to translate this rhetoric into practice. Without empowering and involving

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232. See NEPAD, *supra* note 9, para. 15.

233. See Wilbert Kaahwa, *The Treaty for the Establishment of the New East African Community: An Overview*, 7 AFR. Y.B. INT’L L. 61, 65 (1999).

234. See Reed Kramer, *Improve the Environment for Business*, (Oct. 30, 2001), at <http://allafrica.com/stories/200110300711.html> (last visited Oct. 13, 2002).

235. OAU, *Decision of the Assembly of Heads of State and Government on the Implementation of the Sirte Summit Decision on the African Union*, AHG/Dec. 160(XXXVII), July 2001, para. 7(1) [hereinafter *Dec. on Implementation*].

236. NEPAD, *supra* note 9, para. 115.

237. See *id.* para. 154.

Africa's indigenous investors in the integration agenda, the entire project will be a colossal failure if the potential foreign investors fail to turn up.

### *B. Strengthening the RECs and Improving Infrastructures*

As earlier indicated, one of the objectives of the AU is to coordinate and harmonize the policies of the RECs for the gradual attainment of the overall objectives of the Union.<sup>238</sup> This is a laudable objective. However, Africa's failure in previous integration efforts has, *inter alia*, been attributed to the absence of monitoring and enforcement mechanisms to ensure adherence to agreed time-tables on such matters as tariff and non-tariff barrier reductions. The AU must move from rhetoric to action and put the necessary mechanisms in motion for a "dynamic cooperation" with the RECs and the "enhancement of intra and inter-regional trade."<sup>239</sup> This will also fulfill one of the goals of the AEC, which is "to strengthen the existing" RECs.<sup>240</sup> The strengthening and consolidation of the RECs are the pillars for achieving the objectives of the AEC and the AU.<sup>241</sup>

It is important that the overall economic, political, financial, trade policies of the AU filter and spread to the RECs for implementation. Regular exchange of information among the RECs is vital for them to benefit from each other's experience. Two heads are better than one, not because either is infallible, but because both are unlikely to go wrong in the same direction. However, the AU must be at the center of such exchanges to avoid duplication of efforts. This is the only way that the Union will have a harmonized and integrated approach. Given the different levels of economic development of the RECs Member States, the AU and NEPAD will have to adopt certain implementation principles and strategies. These should include the principle of asymmetry, which addresses variances in the implementation of measures in an economic integration process, and the principle of complementarity, which defines the extent to which economic variables support each other in economic activity. There is also the principle of subsidiarity, which emphasizes multi-level participation of a wide range of participants in the process of economic integration, and the principle of variable geometry, which is the principle of flexibility that allows for progression in cooperation among

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238. See AU Treaty, *supra* note 2, art. 3 and AEC Treaty, *supra* note 51, Art. 88; the OAU recently reaffirmed the status of the RECs "as building blocs of the African Union and the need for their close involvement in the formulation and implementation of all programs of the Union." *Dec. on Implementation*, *supra* note 235, para. 8(b)(ii).

239. OAU, *Lome Declaration*, AHG/Decl.2 (XXXVI), 12 July 2000, para. 15 [hereinafter *Lome Decl.*].

240. AEC Treaty, *supra* note 51, art. 28(1).

241. See *Sirte Decl.*, *supra* note 148, para. 8(ii)(c).

a sub-group of members in a larger integration scheme in a variety of areas and at different speeds.<sup>242</sup>

The RECs also require technical material and other supports, as most of them suffer from inadequate resources for program formulation and implementation. Many RECs countries have very poor infrastructural facilities—roads, railways, ports, and telecommunication facilities.<sup>243</sup> Any integration effort without strong infrastructural facilities is like building a wall with untempered mortar. It will collapse under the pressures of globalization. Similarly, without sustainable industrial development, African economies will be condemned to persistent economic crisis, dependence on humanitarian relief, and deepening poverty. Continuing the cycle, despair and political unrest will set in, with dire consequences for global peace and stability.

Without a strong industrial base, there can be no Foreign Direct Investment (FDI)—defined as an investment involving management control of a resident entity in one economy by an enterprise resident in another economy.<sup>244</sup> In order to attract scarce FDI, a would-be host country must be able to provide the requisite inputs for modern production systems. Efficiency-seeking FDI will tend to be located in destinations able to supply a skilled and disciplined workforce and good technical and physical infrastructure. A good quantity and quality of infrastructure in a location is among the factors that facilitate business operations.<sup>245</sup> All of these are acknowledged in the NEPAD. The question is whether African leaders have the political will to translate their rhetoric into action, since those who want happiness must stoop to find it.

242. See *Treaty for the Establishment of the East African Community*, signed on Nov. 30, 1999, cited in 7 AFR. Y.B. INT'L L. 421 (1999), Art. 1.

243. See, e.g., OAU, *Declaration on Africa's Industrialization*, AHG/Decl.4 (XXXIII), June 1997 (Noting with concern the precarious state of African industries). See *id.* pmbl. para. 1 [hereinafter *Decl. on Industrialization*].

244. See United Nations Conference on Trade and Development (UNCTAD), available at <http://www.unctad.org> (last visited Oct. 13, 2002); see also DONALD RUTHERFORD, *DICTIONARY OF ECONOMICS* 178-179 (1995). The author defines FDI as investment in businesses of another country which often takes the form of setting up of local production facilities or the purchase of existing businesses—contrasting it with portfolio investment which is the acquisition of securities. See *id.*

245. See generally Kjetil Bjorvatn, *Infrastructure and Industrial Location in LDCs*, OCCASIONAL PAPER, NORWEGIAN SCHOOL OF ECONOMICS AND BUSINESS ADMINISTRATION (1999). The UNCTAD presents some host country determinants of the FDI; see generally UNCTAD, *WORLD INVESTMENT REPORT* (1998). The policy framework includes (i) economic, political and social stability; (ii) rules regulating entry and operations of FDI; (iii) standard of treatment of foreign affiliates; (iv) policies on functioning and structure of the markets; (v) international agreement on FDI; (vi) privatization policy; (vii) trade policy—tariffs and non-tariffs barriers and coherence of FDI and trade policy; and (viii) tax policy. Similarly, the economic determinants include (i) business facilitation; (ii) investment promotion; (iii) investment incentives; (iv) hassle costs—related to corruption and administrative efficiency; (v) social amenities; and (vi) after-investment services. See *id.*

Because RECs are essential determinants of FDI,<sup>246</sup> the AU must work hard to assist them to improve their infrastructural facilities. Assuredly aware of these facts, the OAU has called on Member States and the RECs, with the full involvement of the African private sector and with the technical support of the UN Industrial Development Organization (UNIDO) and other relevant international organizations, to elaborate national and regional plans of action for Africa's industrialization.<sup>247</sup> The OAU has also requested the Secretary General to undertake necessary consultations with all the RECs in order to examine the implications of the AU Treaty on the existing institutional, operational, and programmatic relationship between the OAU and RECs. He is to also examine the current and future programs of the RECs in relation to the objectives of the Union.<sup>248</sup> The OAU has also called on the policy organs of the RECs to initiate a reflection on the relationship between the AU and the respective RECs, including the adoption of appropriate decisions on the most effective modalities for actualizing the relationship.<sup>249</sup>

However, there is a need for rationing resources, as many of the RECs duplicate, not only themselves, but also the major activities of the OAU, leading to waste of valuable but scarce resources. International partners need to streamline their programs to ensure that all assistance given to RECs and NGOs is used to support and enhance the programs and projects of the Union and not duplicate or run parallel to them.

### *C. Dealing With Conflicts*

Regional peace and security is an essential foundation for the Union, painfully lacking at the moment, as Africa "holds the record of inter-state wars and conflicts which produce influx of refugees and displaced persons, and result in economic devastation, enormous loss in human life and a drain on its meagre [sic] resources."<sup>250</sup> Conflict is taking its grips on the continent, especially in a great angled swathe from Angola in the southwest to Eritrea in the northeast, with the DR Congo at its fulcrum. The toll on human life is appalling and chilling. Over one million people have died in a twenty-six-year civil war in Angola. In Sudan, over two million people have died in civil war since 1983. Somali is a failed state, ruled by rival warlords since 1991. Inter and intra-state fighting has been raging in the DR Congo since 1996 when rebels overthrew Mobutu Sese Seko. The fighting in Congo has become Africa's First World War, because of the involvement of neighboring

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246. See generally Honest Prosper Ngowi, *Can Africa Increase its Global Share of Foreign Direct Investment (FDI)?* 2(2) WEST AFRICA REVIEW (2001), at <http://www.westafricareview.com/war/vol2.2/ngowi.html> (last visited Oct. 15, 2002).

247. See *id.* para. 6.

248. See *id.* para. 8(b)(iii).

249. See *id.* at 37.

250. *Yaounde Decl. supra* note 1, para. 6.



countries,<sup>251</sup> where geographic proximity plus the play objectives alliances—where all the actors reason in terms of “the enemy of my enemy is my friend”—imbricate these conflicts.<sup>252</sup>

In Eritrea and Ethiopia, tens of thousands have died in a border war raging since May 1998, a war that is compounded by “the arrogance and miscalculation of two state elites out of touch with the needs of their people, and who think that seeking a compromise is a sign of defeat.”<sup>253</sup> Once allies, Rwanda and Uganda are now enemies edging toward major conflict. In Zimbabwe, blacks have seized hundreds of white-owned farms, leading to conflicts and loss of lives. The story is no different in Burundi, where an eight-year conflict between Hutu and Tutsi have left over 200,000 people dead.<sup>254</sup> Sierra Leone has not been left out. Until recently, Foday Sankoh’s army of teenage and child fighters spread savagery across the country, murdering and mutilating tens of thousands, including children.<sup>255</sup> Nigeria has also joined the list, and is currently on the edge of a precipice, following unremitting religious and ethnic conflicts that have wasted several thousands of lives and destroyed valuable economic assets.

African states must turn their swords into their ploughshares, because the concept of a Union will continue to be a façade in a continent that is plagued by conflicts. Regrettably, many of the so-called African leaders are involved in fueling these conflicts, as is the case in DR Congo. Unless African leaders begin to put to better use Africa’s present bloody fields and sad seas, there will be very little meaningful and beneficial development. There are no rules of architecture for a castle in the clouds. As the AU Treaty itself acknowledges, “the scourge of conflicts in Africa constitutes a major impediment to the socio-economic development of the continent.”<sup>256</sup> This sentiment is also shared in the NEPAD document, as earlier noted.

Conflict or political instability in a neighboring country has implications for investment, tourism, and other business activities in the immediate vicinity and even beyond. Conflict prone countries themselves are not likely to attract a substantial quantity and quality of investments, although some multinational corporations seem to be so much attracted by mineral deposits in some of these

251. The countries that are involved in the fray include Burundi, Rwanda, and Uganda—backing the rebels—and Angola, Chad, Namibia, and Zimbabwe—supporting the government. See Elizabeth Blunt, *DR Congo War: Who is Involved and Why*, BBC NEWS, Thurs. Jan. 25, 2001, at [http://www.bbc.co.uk/hi/english/world/africa/newsid\\_1136000/1136470.stm](http://www.bbc.co.uk/hi/english/world/africa/newsid_1136000/1136470.stm) (last visited Oct. 29, 2002).

252. See Filip Reyntjens, *Briefing: The Second Congo War: More than a Remake*, 98 AFRICAN AFFAIRS 241, 241 (1999).

253. Jon Abbink, 100(401) AFRICAN AFFAIRS 656 (2000) (reviewing T. NEGASH, BROTHERS AT WAR: MAKING SENSE OF THE ERITREAN-ETHIOPIAN WAR (2000)).

254. See Tom Masland & Jeffrey Bartholet, *Fury and Fear*, NEWSWEEK, May 22, 2000, at 16.

255. See generally ABDUL KOROMA, SIERRA LEONE: THE AGONY OF A NATION (1996).

256. AU Treaty, *supra* note 2, pmbl. para. 8.

countries that they give a blind eye to political unrest.<sup>257</sup> To the extent that dreadful warfare persists in Africa, it will be difficult for the continent to increase its global share of FDI inflow in any appreciable figure.<sup>258</sup> The promotion of peace, security, and stability is a prerequisite for the implementation of development and integration agenda. It is Africans, not outsiders, who must accomplish these goals through dialogue and effective mediation, peacekeeping, and peace building.

#### *D. Redefining Colonial Boundaries*

A regional union cannot go far without a strong and sustained political foundation and commitment. Dealing with the colonial boundaries has repeatedly challenged that commitment. Africa is an arbitrary geographic unit, not a natural, cultural or economic one, with more borders and states than any other region. There is no sense of national identity in Africa; and yet the most effective basis for cohesion that is necessary to sustain a nation state is a sense of national identity emanating from collective consciousness, what the Germans calls the *Volksgeist*. The citizens of a national state can be defined as a "single collection of individuals that has become conscious of its identity."<sup>259</sup>

Modern African states were largely the results of rivalries, partition conferences, and conquests. The Berlin Conference of 1884-5, for example, saw the slicing of Africa into various spheres of influence by the European powers. They made territorial allocations only to reduce armed conflicts among themselves rather than any regard for local inhabitants or geography.<sup>260</sup> This event had a profound impact on the continents of Africa and Europe and their peoples, and, indeed, the global system at large.<sup>261</sup> As the recent decision of the International Court of Justice (ICJ) on the Land and Maritime Boundary between Cameroon and Nigeria<sup>262</sup> demonstrates, the arbitrary lines drawn on

257. Indeed, the lack of transparency in resource extraction industries across Africa has encouraged multinational corporations to provide funds to unaccountable military and political elites who then use conflict to cover up corruption and embezzlement in their, including Angola (oil and diamonds), Democratic Republic of Congo (timber, diamonds, cotton), Sierra Leone (diamonds, Liberian timber) and the Sudan (oil).

258. See Ngowi, *supra* note 246.

259. M. FORSYTH, *THE THEORY AND PRACTICE OF CONFEDERATION* 14 (1981).

260. See Jeffrey Herbst, *The Creation and Maintenance of National Boundaries in Africa*, 43 INT'L ORG. 673, 678-85 (1989); SAADIA TOUVAL, *THE BOUNDARY POLITICS OF INDEPENDENT AFRICA* 3-17 (1972); see generally THOMAS PAKENHAM, *THE SCRAMBLE FOR AFRICA: WHITE MAN'S CONQUEST OF THE DARK CONTINENT FROM 1876 TO 1912* (1991).

261. See generally AMADU SESAY, *AFRICA AND EUROPE: FROM PARTITION TO INDEPENDENCE OR DEPENDENCE?* (1986); WALTER RODNEY, *HOW EUROPE UNDERDEVELOPED AFRICA* (1974); FRANTZ FANON, *THE WRETCHED OF THE EARTH* (1963).

262. See *Case Concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea Intervening)*, ICJ General List, No. 94, Oct. 10, 2002, available at [http://www.icj-cij.org/icjwww/idocket/icn/icnjudgment/icn\\_ijudgment\\_20021010.PDF](http://www.icj-cij.org/icjwww/idocket/icn/icnjudgment/icn_ijudgment_20021010.PDF) (last visited Oct. 29, 2002) [hereinafter *Cameroon Case*]. The

maps have left countries with meaningless boundaries with no rhyme or reason in the geographical, topographical or ethnic character of particular regions.

More frequently, several ethnic groups have found themselves in one and the same country,<sup>263</sup> living on either side of the administrative frontier. For example, the *Yorubas*, who were previously united under the Oyo Empire, find themselves now divided into the colonies of Dahomey, Nigeria, and the Protectorate of Lagos.<sup>264</sup> The *Ewes* were divided between Gold Coast and Togo, *Efiks* and *Ibibios* between Nigeria and Cameroon and the *Somali* between Ethiopia, Somalia, Kenya and Djibouti.<sup>265</sup> The *Asante* of the Asante Empire found themselves in Ivory Coast (now Cote d'Ivoire) and Ghana. The *Mossi* were divided into Ghana and Burkina Faso (then called Upper Volta) while the *Kanuri* of Kanem-Bornu Empire became colonial subjects in Nigeria, Cameroon, and Chad.<sup>266</sup> In southern Africa, Malawi, South Africa, Zambia, Botswana, Lesotho, and Zimbabwe became countries that developed out of not only the actions of Shaka, the Zulu warrior, but also the intrigues of British settlers led by Cecil Rhodes.<sup>267</sup>

Today's "modern states" are nothing but "imagined communities," where "the members of even the smallest nation will never know most of their fellow-members, meet them, or even hear of them, yet in the minds of each lives the image of their communion."<sup>268</sup> In such a state of affairs, nationalism works under false pretenses, and invents nations where they do not exist. Besides, the lack of defined territories by post-independence African states has led to the crisis of "inability to make progress with the integration of its people and to ensure their compliance with strategies designed within a specific territorial framework."<sup>269</sup>

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ICJ determined the boundary between Cameroon and Nigeria, *inter alia*, from Lake Chad to the sea and requested each party to withdraw all administrative and military or police forces present on the territories falling under the sovereignty of the other party. In reaching its decision, the ICJ reflected on the scramble for Africa in the following words:

The dispute between [Cameroon and Nigeria] as regards their land boundary falls within an historical framework marked initially, in the nineteenth and early twentieth centuries, by the actions of the European Powers with a view to the partitioning of Africa, followed by changes in the status of the relevant territories under the League of Nations mandate system, then the United Nations trusteeship, and finally by the territories' accession to independence.

*Id.* para. 31.

263. See MAI PALMBERG, NATIONAL IDENTITY AND DEMOCRACY IN AFRICA 11 (1999).

264. *See id.*

265. *See id.*

266. *See id.*

267. See DELE OLOWU AND JAMES S. WUNSCH, THE FAILURE OF THE CENTRALIZED STATE: INSTITUTIONS AND SELF GOVERNANCE IN AFRICA 35 (1990).

268. BENEDICT ANDERSON, IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM 6 (1992).

269. Dominique Darbon, *Crisis of the State & Communalism: New Ideological Stakes in African Integration*, in REGIONALISATION IN AFRICA, *supra* note 114, at 41.

The paradox is that while the OAU is striving at regional co-operation and integration, it is simultaneously rigidly adhering to the colonial borders drawn in imperial European capitals. The *uti possidetis juris* doctrine—that disastrous sword of Damocles hanging over the exercise of self-determination—enshrines the inviolability of the frontiers inherited from colonialism. Both the UN<sup>270</sup> and the OAU<sup>271</sup> flatly reject any *ex ante* right to secession. They insist on the cosmopolitan, multi-ethnic solution under all circumstances, even if, as Zelim Skurbaty points out, “the professed Pollyanna of democracy plus minority rights threatens to turn (in some specific cases) into forced cohabitation.”<sup>272</sup> Thus, in the *Burkina Faso v. Mali* case,<sup>273</sup> the ICJ emphasized that *uti possidetis juris* constituted a general principle, whose purpose was to prevent the independence and stability of new states from being endangered by fratricidal struggles provoked by the challenging of frontiers.<sup>274</sup>

It has been argued that African rulers have found the reason for their right to rule in the maintenance of these borders: “These boundaries defined and legitimated the particular kind of power structure which grew up within post-colonial African states, and provided the framework for the politics of patronage . . . through which those who controlled these states sought to survive.”<sup>275</sup> However, the fact remains that these frontiers militate against the economic, political, or social viability and coherence of the African states thus artificially created. The consequence for Africa of indulging in these two tendencies—that is, remaining politically separate while being convinced of

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270. See, e.g., UN G.A. Res. 2625 (XXV) (1970).

271. See, e.g., OAU Res. 16(1) (1964); see also AU Treaty, *supra* note 2, art. 4(b) which enshrines the principle of “respect of borders existing on achievement of independence.” *Id.*

272. ZELIM SKURBATY, AS IF PEOPLES MATTERED: A CRITICAL APPRAISAL OF ‘PEOPLES’ AND ‘MINORITIES’ FROM THE INTERNATIONAL HUMAN RIGHTS PERSPECTIVE AND BEYOND 27 (2000).

273. ICJ Rep. 554 (1986).

274. See *id.* at 566–7. See also Award of the Tribunal in the *Guinea-Guinea (Bissau) Maritime Declaration* case, 77 I.L.R. 77, 636 at 657 (para. 40) (1985); Award of the Tribunal in *Guinea (Bissau)—Senegal Delimitation* case, 83 I.L.R. 1, 22 (1989); and the Separate Opinion of Judge Ad Hoc Ajibola in *Territorial Dispute (Libya/Chad)* case, 1994 ICJ Rep. 83–92. Steven Ratner has argued that the policy was intended to serve an external and internal purpose: “externally, it would seek to prevent irredentist tendencies by neighbors from turning into territorial claims and the possible use of force. Internally, it would give clear notice to ethnic minorities that secession or adjustment of borders was not an option,” Steven R. Ratner, *Drawing a Better Line: Uti Possidetis and the Borders of New States*, 90 A.J.I.L. 590, 595 (1996); see also TOUVAL, *supra* note 260, at 90. The relevance of *uti possidetis* today is evidenced by the practice of states during the dissolution of the former Soviet Union, Yugoslavia and Czechoslovakia, “apparently sanctifying the former internal administrative lines as interstate frontiers,” Ratner, *id.* at 590; see, e.g., *Charter of the Commonwealth of Independent States*, 34 I.L.M. 1279, 1283 (1995); SC Res. 713, pmbl. para. 8, UN SCOR, 46th Sess., Res. & Dec., at 42, 42-3, UN Doc. S/INF/47 (1991).

275. Christopher Clapham, *Boundaries & States in the New African Order*, in REGIONALISATION IN AFRICA, *supra* note 114, at 55.

the need to achieve economic fusion at arm's length—has been “confusion about means and ends.”<sup>276</sup>

For true integration to occur, Africa must radically redefine its boundaries in terms of pre-colonial identities, so that regions can consist of people wishing to work together rather than against one another for ethnic benefits. It may also be that existing states need not break up to enter into the new arrangement, although the revisions of borders in alignment with *de facto* authority and resources has been predicted, in the light of economic failures and the contraction of the institutional presence of many governments towards the capital city and away from borders.<sup>277</sup> Either way, African countries need to renegotiate their initial arrangements to enter into an all-African union framework; “[t]hey must be willing to challenge their institutionalised [sic] dependency on transnational actors in order to enter the African national system.”<sup>278</sup> There could also be a sort of devolution of power to local rulers, similar to pre-colonial arrangements.<sup>279</sup> What is important is the need to make Africans gain a sense of national and, *a fortiori*, continental identity, otherwise the idea of an “African Union” will simply be a collection of thousands of tribes competing for ever-diminishing and diminished resources.

It is on this note that this paper may, *salva reverentia*,<sup>280</sup> commend Africa's efforts, through NEPAD, to focus on the region as a primary operational sphere rather than the African state in its current boundaries. NEPAD has chosen to elaborate its projects in ten sectors in each of the continent's five regions—West, North, Central, East, and Southern Africa and Madagascar.<sup>281</sup>

#### *E. Africans Must Learn to Live Together*

The OAU has urged Member States to take the necessary steps to popularize the AU among African citizens at all levels, “so that the [AU] can be truly a Community of Peoples.”<sup>282</sup> This is obviously a noble idea, except that the love-hate attitude of some Africans towards their fellow Africans might prevent such “a Community of Peoples” from evolving. Being loved is not the same thing as being safe; and being hated is a danger in itself. Thousands of Africans are regular victims of expulsions, harassment and even massacre at the hands of fellow Africans, “for no reason other than the fact that

276. Mistry, *supra* note 11, at 553.

277. See Clapham, *supra* note 275, at 62.

278. Muchie, *supra* note 123, at 39.

279. See Clapham, *supra* note 275, at 63.

280. Without outraging reverence.

281. See NEPAD, *Conference on the Financing of NEPAD*, Dakar, (April 15-17, 2002), available at <http://www.nepadsn.org/entry.html> (last visited Oct. 15, 2002).

282. *Dec. on Implementation*, *supra* note 235, para. 6(i).

they are simply not welcome in their country of abode.”<sup>283</sup> In Libya, blacks have been ferociously and, sometimes, murderously attacked by local citizens, furious with Ghaddafi for consorting with and financing “blacks” at the expense of Arab-Africans in his own country. They clearly do not share Ghaddafi’s desire to encourage pan-Africanism.<sup>284</sup>

There is a massive gang-up against Nigerians in Ghana, “helped by the Ghanaian media who take turns to express anti-Nigerian sentiments both in print and on air.”<sup>285</sup> As Mr. Ogbecchie stated: “The belief in Ghana is that every Nigerian is rich. They also believe that any crime committed in Ghana is by Nigerians . . . The Ghanaians think that they are avenging what Nigerians did to them in 1983 when Nigeria asked them to leave the country.”<sup>286</sup> It is true that the ECOWAS “sustained a serious injury” when Nigeria took action, on January 17, 1983, to expel a large number of illegal resident aliens, many of whom were citizens of ECOWAS Member States.

If the idea of an African Union and economic integration is to be feasible, then the citizens of Member States should be able to move freely throughout the continent. They should be free to live and work any way, with equal access to social benefits, education and civic rights and should be protected by the same fundamental rights, subject, of course, to such reasonable and objective restrictions that are necessary in a democratic society. These are the minimum requirements of a federating entity.<sup>287</sup> Until Africans become their brothers’ keepers, and until the wise learn to smile with the simple and the rich eat with the poor, the integration crusade will win no convert.

#### *F. Financing Integration*

The viability and credibility of the AU and NEPAD depend critically on the level of funding. Mobilization of resources is crucial in promoting both regional and intra-regional integration. Adequate resources have to be put in developing agriculture, for example, as this remains the backbone of most of the African economies. Without this, the goal of fighting poverty will remain “a fleeting illusion to be pursued but never attained.”<sup>288</sup> Emphasis should be

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283. D. O. Obiaja, *African Union Day: A Resounding Disaster*, 4(36) THE FORUM 8 (June – July 2001).

284. See Ofeibe Quist-Arcton, *From OAU to AU—Wither Africa?*, (July 13, 2001), at <http://allafrica.com/stories/printable/200107130178.html> (last visited Aug. 15, 2002).

285. *Detention Leads to Ghana-Nigeria Tension*, AFRICAN TOPICS 20 (Jan. – Mar. 2000).

286. *Id.*

287. See generally *Edwards v. California*, 314 U.S. 160 (1941). The U.S. Supreme Court declared that “it is a privilege of citizenship of the United States, protected from state abridgement, to enter into any state of the Union, either for temporary sojourn or for the establishment of permanent residence there.” *Id.* at 183.

288. Bob Marley, ‘War’: *Rastaman Vibration*, in A. OJO, BOB MARLEY: SONGS OF AFRICAN REDEMPTION 89 (2000).

placed on the development of micro-credit finance schemes, the provision of market facilities, and the improvement or rural access roads, among many other needs crying for attention.

The critical question is from what source will these resources flow? If the AU expects to draw its resources primarily from membership dues, then this is clearly bad news. How will the AU augment its resources in comparison with the OAU, which has always had chronic funding problems? Will the AU be seeking other sources of funding? A possible source might include some OECD countries; but given that most African countries are highly dependent on concessional finance from these countries for their basic budgetary requirements, it does not make sense for the AU to turn to these governments.<sup>289</sup> Another choice is direct international aid partners for financial needs, which has far-reaching political implications for the accountability of the relevant organs of the AU. If international financial institutions pay the piper, then they will be entitled to dictate the tune of the music. It appears that the AU will find itself between the devil and the deep blue sea.

One of the many reasons for the failure of the OAU to make much impact on the many issues in the continent is lack of willingness on the part of Member States to finance the organization. The OAU has never been able to mobilize even a modest budget of twenty-five to thirty million U.S. Dollars. More than half of the membership does not, or is not in a position to, pay its modest contributions due to a variety of reasons—starting with embezzlement of public funds back home. These rulers have flung their countries' scarce resources to the winds, like rain. Barring any economic miracle, it is overwhelmingly improbable that the *status quo* will change in the foreseeable future, as only very few African countries—including, maybe, South Africa, Mauritius, and Botswana—are on the path of sustainable economic growth.<sup>290</sup> The large majority of others exist on handouts and crumbs from Western countries and their donor agents, in the name of development aid that are, largely, confined to the provisions of technical assistance and advisors as well as research and training.<sup>291</sup>

Some African countries are intrinsically disadvantaged, with few natural resources, while others have particularly challenging physical environments. Several African countries, for example, are currently facing exceptional food

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289. See Economic Commission for Africa, *The Architecture and Capacity of the African Union*, AFRICAN UNION SYMPOSIUM, ADF III (2002), at <http://www.uneca.org/adfiii/auissuepn2.htm> (last visited Sept. 15, 2002).

290. See, e.g., *ECA Report 2002*, *supra* note 119, at ix (rating ten African countries as having good economic policies, out of the twenty-three countries assessed with South Africa as the top score, just ahead of Botswana, followed by Namibia, Swaziland, and Mali).

291. See TERESA HAYTER, *EXPLOITED EARTH: BRITAIN'S AID AND THE ENVIRONMENT* 28 (1989).

emergencies caused by difficult weather conditions.<sup>292</sup> Many others are resource-rich but have failed to prosper because of man-made problems, poor governance or economic mismanagement. Angola is a classic example, where man-made problems have brought the country to its knees. Although it is the second largest sub-Saharan oil producer<sup>293</sup> and the fourth largest diamond producer, Angola is nevertheless ranked as the fifteenth most underdeveloped country in the world, with the second worst level of under-five child mortality.<sup>294</sup>

On the eve of the launching of the AU, the continental body was still owed a whopping \$54.53 million by 45 of its 54 member countries,<sup>295</sup> including Morocco, which, technically, withdrew its membership in 1984, although its arrears goes back to 1981. Only nine Member States have fully paid their dues, as at May 2002. These are Angola (which, ironically, has been in a civil war for three decades), Botswana, Cameroon, Ethiopia, Mauritius, Namibia, South Africa, Swaziland, and Zambia.<sup>296</sup> Those in arrears include such 'giants' as Nigeria (\$1,943,725), Egypt (\$1,943,725), Algeria (\$1,736,743), Ghana (\$2,013,170), and Libya—the flag bearer of the African Union—(2,058,822.80).<sup>297</sup> Chronic financial crisis have prevented the

292. See, e.g., Global Information and Early Warning System on Food and Agriculture, *Food Supply Situation and Crop Prospects in Sub-Saharan Africa*, at <http://www.fao.org/WAICENT/faoinfo/economic/gIEWS/english/caf/eaftoc.htm> (last visited Aug. 1, 2001) (reporting that seventeen countries face food emergencies in sub-Saharan Africa). The countries listed are Angola, Burkina Faso, Burundi, Chad, DR Congo, Eritrea, Ethiopia, Guinea, Kenya, Liberia, Niger, Rwanda, Sierra Leone, Somalia, Sudan, and Tanzania. See *id.*

293. Angola's daily crude oil production in 2000 was 760,000bpd. See *World Oil*, (Feb. 2001), at 91, available at <http://www.hwwilson.com/Databases/PDF/sample/tf5.pdf> (last visited Oct. 15, 2002).

294. See Philippe Le Billon, *Angola's Political Economy of War: The Role of Oil and Diamonds 1975-2000*, 100 AFRICAN AFFAIRS 55, 57 (2001). See generally ANGOLA'S WAR ECONOMY: THE ROLE OF OIL AND DIAMONDS, (Jakkie Cilliers and C. Dietrich eds., 2000).

295. For the list of defaulting countries, see Baffour Ankomah, *African Union in Danger of Being Stillborn*, NEW AFRICAN, June 2002, at 16, 20.

296. *Id.* at 19. Cf. *Decision of Congratulations to Member States Which are Up to Date in the Payment of Their Contributions to The Organization*, OAU Doc. CM/2188, CM/Dec. 551 (LXXIII) (April 2001) (stating that the eleven member states that are paid up are: Botswana, Ethiopia, Mozambique, Namibia, Senegal, South Africa, Swaziland, Togo, Mauritius, Lesotho, and Chad, as of Feb. 26, 2001); *Resolution*, CM/Res. 1279 (LII), para. 2(d); *Resolution*, CM/Res. 1311 (LII).

297. *Id.* at 20. Cf. AU Treaty, *supra* note 2, art. 23(1). The AU Treaty provides that: [t]he Assembly shall determine the appropriate sanctions to be imposed on any Member State that defaults in the payment of its contributions to the budget of the Union in the following manner: denial of the right to speak at meetings, to vote, to present candidates for any position or post within the Union or to benefit from any activity or commitments, therefrom.

*Id.* See also *Decision on the Report of the Fifteenth Session of the Committee on Contributions*, para. 6(c), Doc. CM/2189, CM/Dec. 550 (LXXIII) (April 2001) (endorsing the recommendation that nationals of defaulting countries should not be recruited as new staff members. The decision also states that the General Secretariat must comply with this measure for the recruitment of regular as well as temporary staff). See *id.*



continental body from executing most of its programs, not to mention the non-competitive salaries that do not attract and retain qualified technocrats for the body and its institutions.<sup>298</sup> It is doubtful if the continental organization can afford the proliferation of institutions envisaged in the AU Treaty and NEPAD. Most of these institutions overlap in functions, while others are merely recycled elements of some redundant OAU organs. It will be fascinating to see how the AU goes around this problem, particularly as its budget will be more substantial than that of the current OAU. In the end, the reality of things might force the AU to trim down its size, if all of its budget will not be used for overheads and on jamborees.

There are already signs of unease. For the purposes of funding the transitional period, the OAU has authorized its Secretary General to "explore the possibility of mobilizing extra budgetary contributions from Member States, OAU Partners and others,"<sup>299</sup> a euphemism for begging! The OAU has also authorized the Secretary General to "undertake studies, with the assistance of experts, to identify alternative modalities of funding the activities and programmes [sic] of the African Union, bearing in mind that the Union cannot operate on the basis of assessed contributions from Member States only, and to make appropriate recommendations thereon."<sup>300</sup> As noted earlier in this paper, there are also on-going conferences on the financing of NEPAD. These are bold steps though, and it may be suggested that the private sector should play a complimentary role to the public sector in mobilizing resources for integration efforts in Africa.

The danger is that failure to sufficiently fund the AU and NEPAD will leave governments with high disposable income to attempt to buy political loyalty by funding these institutions. Only recently, during the Fourth Extraordinary Session of the OAU in 1999, the Libyan government had to bail out some defaulting States with a check for \$4.5 million<sup>301</sup> and a subsequent grant of \$1 million to fund the process towards the AU.<sup>302</sup> One may wonder

298. See, e.g., Council of Ministers, *Decision on the Progress Report of the Secretary General on the Implementation of the Restructuring of the OAU General Secretariat*, Doc 2190 (LXXIII) Rev.1, which, *inter alia*, called upon "the Secretary General to submit to the next Session of the Council within the framework of the Career Development Plan, comprehensive proposals to address motivation of Staff, including the review of salaries," *Id.* See also CM/Dec.554 (LXXIII) (2001). See also *Decision on Improvement in the Conditions of Service of OAU Staff*, 76th Ord. Sess. of the OAU Council of Ministers, Durban, South Africa, 28 June – 6 July 2002, CM/Dec. 654 (granting, "as an interim measure, a 15% salary increase, across the board, to the entire staff [of the OAU] retroactively, with effect from 1st March 2002." *Id.* para. 2. The measure also requested "the General Secretariat to determine in absolute terms, the financial implications of the salary increase granted and to take necessary steps to implement immediately the decision for the benefit of the current staff." *Id.* para. 3.

299. *Dec. on Implementation*, *supra* note 235, para. 11(ii).

300. *Id.*

301. See *Libya Pays Out OAU Contributions for Seven States*, PAN AFRICAN UNION TREATY, Sept. 7, 1999. The states are Comoros, Guinea-Bissau, Equatorial Guinea, Liberia, Niger, Sao Tome and Principe, and Seychelles. See *id.*

302. See Cilliers, *supra* note 138.

why this sudden generosity was extended on the part of Libya? Is Ghaddafi a demagogue, advancing his own interest while pretending to be advancing the interest of Africa? Is his revived interest in sub-Saharan Africa more of a tactical move than a structural shift in its foreign policy, as has been suggested?<sup>303</sup> Recent events lend credence to some of these speculations. Ghaddafi has clearly built his support in the OAU to strengthen Libya's position in international organizations. Africa's support has helped Libya's slow and checkered return to the world fold, after years as a global pariah in international isolation and under UN sanctions for supporting terrorism. The OAU, for example, stood solidly behind Ghaddafi during the Lockerbie crisis that pitted the United States and Britain against Libya.<sup>304</sup>

#### V. CONCLUSION: A HARMONY OR A CACOPHONY?

The OAU has declared, "25 May as work-free day throughout the territories of Member States of the Organization of African Unity. On this occasion, appropriate activities will be organized to bring African peoples closer together, reaffirm their faith in the integration and popularize the ideals of union in the Continent..."<sup>305</sup> Consequently, Member States have been invited to take all necessary legislative and regulatory measures for the implementation of the decision. Similarly, March 2nd of each year is to be commemorated, as "Union Day," and Member States are "to observe it appropriately."<sup>306</sup>

It is doubtful that the citizens will be able to sing the integration song on these days, as many of them are imprisoned by the chilled winter of penury and unfulfilled longings. The OAU itself estimates that "close to half of its population lives in poverty and misery, while unemployment and under-employment have become endemic, especially in urban areas."<sup>307</sup> This is a very conservative estimate; the reality is that those living on the outskirts of

303. See Asteris Huliaras, *Qadhafi's Comeback: Libya ad Sub-Saharan Africa in the 1990s*, 100 AFRICAN AFFAIRS 5, 9 (2001).

304. See, e.g., OAU, *Declaration on the Dispute Between the Libyan Arab Jamahiriya and the United States of America and Great Britain*, AHG/Dec.2 (XXXIII) (appealing to the Security Council to lift the sanctions imposed on Libya and threatening that continued imposition of sanctions "might lead African countries to devise other means of sparing the Libyan people future suffering."). *Id.* para. 6.

305. OAU, *Decision Proclaiming 25 May a Work-Free Day in Africa*, AHG/Dec.157 (XXXVI), (July 2000), para. 1; see also *Dec. on Implementation*, *supra* note 235, para. 14(i), where the decision was reaffirmed.

306. *Id.*

307. *Yaounde Decl.* *supra* note 1, para. 6; NEPAD, *supra* note 9, para. 4. In Africa, 340 million people, or half the population, live on less than \$1 per day. The mortality rate of children under five years of age is 140 per 1000, and life expectancy at birth is only fifty-four years. Only fifty-eight per cent of the population have access to safe water. The rate of illiteracy for people over fifteen is forty-one per cent. There are only eighteen mainline telephones per 1000 people in Africa, compared with 146 for the world as a whole and 567 for high-income countries. See *id.*

prosperity are far more than those living within it.<sup>308</sup> Several Africans are involved in the perennial struggle for a quality of existence that is often intangible; and in such a condition, they can scarcely be expected to concern themselves with the slogans of integration. They will, at best, exist in an ecstasy of indifference, since there can be no music for a man who is deaf any more than there can be sweet smells for a man with a cold in the nose. Africans are deaf to the high sounding music of a Union, whose chord is uncertainly applied, making the music a *cacophony*.

This new millennium presents Africa with two choices. The first is for the continent to remain as a source of raw materials and, *a fortiori*, a dumping ground for products from the western world. The second is for the leaders to press forward towards a politically united and economically integrated continent, one that is capable of asserting positive influence in the comity of nations as well as competing effectively and participating meaningfully in the elaboration of the arrangements of international trade.<sup>309</sup> There is no neutral ground in the universe. Africa's future economic growth is still predictably gloomy.<sup>310</sup> Yet, without rapid growth and development, African countries will remain "wards of the international community."<sup>311</sup> The future cannot be predicted; it must be created.

It is imperative for Africa's "management generation" to take urgent steps to rescue the continent from its downward slide and to generate a new collective dynamism that can lead to a genuine, self-sustaining, and self-reliant development. Since simply being hungry does not mean that there is food, the leaders must make a last leap in deepest desperation to ensure that this latest journey does not, like the OAU, end in betrayal of hopes and squandering of opportunities. While opening their minds to the lessons of the experience of other societies, they must also adopt a new vision for the continent's renaissance and development, and translate this vision into an appropriate and coherent program of action. They must adopt holistic solutions to a bedeviling predicament transcending the continent's almost two hundred national boundaries. They must construct the African state from the local, sub-national, regional and continental levels, "with a clear self-reliant, self-confident,

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308. Cf. UNCTAD, *ECONOMIC DEVELOPMENT IN AFRICA: FROM ADJUSTMENT TO POVERTY REDUCTION: WHAT IS NEW?* UNCTAD/GDS/AFRICA/2, at 2 (2002) (estimating that the proportion of the population living on less than US\$1 a day in the least developed countries of Africa has increased continuously since 1965–1969, rising from an average of 55.8 *per cent* in those years to 64.9 *per cent* in 1995–1999).

309. See *Sirte Decl.*, *supra* note 148, para. 6. "It is also our conviction that our continental Organisation [sic] needs to be revitalised [sic] in order to be able to play a more active role and continue to be relevant to the needs of our peoples and responsive to the demands of the prevailing circumstances." *Id.*

310. See, e.g., *ECA Report 2002*, *supra* note 119, at 1 (maintaining that, though Africa's average GDP growth for 2001 was 4 *per cent*, the continent, at that rate, will not achieve any of the Millennium Development Goals set by the UN).

311. Paul Krugman, *Developing Countries in the World Economy*, in 118 *DAEDALUS* 183, 184 (1989).

development agenda."<sup>312</sup> Real change must come from within. The West will not donate or invest their monies out of sympathy to Africa; the continent will have to earn such investment.

The tasks ahead require visionary leadership, courage, hard work, willingness to turn a new leaf, and commitments to building the infrastructures that will make integration and foreign investment possible and secure fundamental freedoms for all. As Fredrick Chiluba, the former President of Zambia and former Chairman of the OAU puts it, "Africa does not have the luxury of time. If we hesitate, or procrastinate in implementing the decision we have taken concerning the establishment of the African Union, time will pass us by. We are living in an era where change takes place in milliseconds."<sup>313</sup> Africans are vigilantly expecting the dividends of integration, like the biblical wise virgins awaiting the coming of the bridegroom. No doubt, "long is the way and hard, that out of Hell leads up to light . . .",<sup>314</sup> but that is the only course by which the continent will escape from this vast wilderness of night. A pragmatic regional integration agenda holds out the prospects of improving the living standards of Africans and the dividends of assured peace and stability that will accrue from the synergies between diplomacy and development. If this new experiment succeeds, it will be the triumph of hope over experience.

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312. Muchie, *supra* note 123, at 39.

313. Quist-Arcton, *supra* note 284.

314. John Milton, *Paradise Lost*, Book II, Line 433 (1667).