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Report on

A Comparative Analysis of the Treaties
of the African Economic Community and
the Economic Community of West African States (ECOWAS)

Background paper by
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for review of the ECOWAS Treaty
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BACKGROUND

At the request of the intergovernmental Committee reviewing the ECOWAS Treaty, Prof. S.K.B. Asante, Senior Regional Adviser, undertook a mission to Abuja, Nigeria, from September 28 to October 8, 1991.

The terms of reference were twofold: (a) to participate and provide technical assistance to the series of plenary meetings of the Committee Reviewing the ECOWAS Treaty and (b) to lead a discussion on a paper entitled "A Comparative Analysis of the Treaties of the African Economic Community and the Economic Community of West African States (ECOWAS)" prepared by Prof. Asante. The paper is, herewith, attached.

INTRODUCTION

1. At Abuja, Nigeria, in June 1991, the 27th Summit of the Organization of African Unity took a giant step towards Africa's long-cherished goal of unifying the continent's fragmented and vulnerable national economies into a single, more powerful economic bloc. The adoption of the all-important treaty establishing a timetable towards the creation of an African Economic Community (AEC) by the year 2025^{1/} is a major historic undertaking which must be seen as vital for Africa's economic survival, in the face of its economic crisis and growing marginalization in world affairs. It is, undoubtedly, Africa's response to the challenges posed by the emerging world of trading blocs: the highly successful US-Canada Free Trade Agreement, the Australia-New Zealand Free Trade Area, the new economic bloc in Asia and the Far East and, above all, the emerging "Fortress Europe" in 1992, which threaten to isolate Africa from world markets ^{2/}.

2. Within Africa itself, the Abuja Treaty does not only pose a new challenge to the strategy of regionalism, it has also given a new lease of life to the existing subregional economic communities-- ECOWAS, PTA, ECCAS, AMU and SADCC-- which hold a special place in the progressive establishment of the new pan-African Community. The treaty underscores the importance of these communities in the process for the attainment of the objectives of the Community as executing instruments of Community programmes at the subregional level, as reflected in virtually all the salient chapters of the treaty. So central is the role of the subregional economic schemes

^{1/} For an earlier analysis of the future African Economic Community see S.K.B. Asante, "Towards a Continental African Economic Community by the year 2000?" in Christopher Fyfe (ed.) African Futures (Edinburgh: Edinburgh University, 1988), pp. 71-106/.

^{2/} S.K.B. Asante, "Africa and the Brave New World of Regionalism", Development and Cooperation, Feb. 1991.

to the concept of continental economic unity that without them the new pan-African Community collapses as a concept and strategy.

3. As one of its central objectives, the AEC is to coordinate and harmonize policies among the existing subregional economic groupings 'in order to foster the gradual establishment of the African Economic Community' (Article 4 (d)). Towards this end, the Assembly, as the supreme organ of the AEC, has the power to 'take decisions and give directives' concerning the subregional economic communities in order to ensure the realization of the objectives of the Community' (Article 8 (h)). This is reinforced in chapter 4 which commits the Community members to take all the necessary measures aimed at promoting increased cooperation among the existing subregional economic schemes. And to underscore the relations which should exist between the Community and the existing economic communities, the decisions of the Assembly and the regulations of the Council of the Community are binding on the subregional economic schemes (Arts. 10(2) and 13 (2)). This specific role assigned to the subregional economic groupings in the setting up of the Community is confirmed in the first five stages of the Community's development, starting from the strengthening and coordinating of their activities, to the establishment of a free trade zone among member States, and the creation of a customs union.

4. Against this background, the concept of the African Economic Community, its take-off and its progressive establishment is closely linked to the economic integration process at the subregional level. Hence, to forestall any possible conflict of interest that might arise and to establish a harmonious and effective working relationship between the continental Economic Community and the subregional Economic Communities there is the need for a thorough review of the provisions of the treaties establishing the latter schemes to synchronise with the structure, scope and approach to integration of the former. This should

particularly be the case when it is considered that the Abuja Treaty has not only taken an adequate leaf from the experience and fluctuating fortunes of the African economic cooperation and integration processes over the years; it has also, against the background of recent economic and political developments in Africa, responded sufficiently to the complex and multi-dimensional aspects of Africa's economic recovery, transformation and development. It is in light of this felt-need that this discussion paper has been prepared with particular reference to the ECOWAS Treaty.

AEC AND ECOWAS: THE ABUJA AND LAGOS TREATIES COMPARED

(I) General Background

5. The Abuja Treaty is remarkably significant and to a large extent different from the Lagos Treaty in terms of institutional and decision-making processes, as well as approach and orientation. It is comprehensive in scope containing 106 articles arranged into 22 chapters while the Lagos Treaty has 64 articles covering 14 chapters. Abuja brings together not only the main development sectors highlighted in the Lagos Plan of Action but also many other strictly non-economic or "positive" integration aspects of cooperation. As a corollary, it reflects admirably the holistic view of the concept of development that links the so-called objective and quantitative factors of production on the one hand, and the so-called non-economic factors-- the political, social, cultural, environmental and institutional, on the other. In particular, the pan-African treaty, unlike that of ECOWAS, reflects the essential elements of a democratic framework or the importance of popular democracy in the development process as forcefully articulated in the UNDP's seminal Human Development Reports 1990 and 1991 and the ECA's African Charter for Popular Participation in Development and Transformation, adopted in February 1990, and reinforced by the OAU's commitment at its July 1990 Summit at Addis Ababa to democratization in the development process.

(ii) Underlying Principles

6. Unlike the Lagos Treaty, the Abuja Treaty provides an instructive preface of a set of fundamental principles which breath through the operative chapters of the treaty. The first is related to the 'promotion of a peaceful environment' as a prerequisite for Africa's successful economic development. Linked to this, second, is the emphasis placed on 'the respect, promotion and protection of human and peoples' rights', in accordance with the provisions of the African Charter on Human and People's Rights adopted by the OAU in 1981. Third, African States are committed, under the treaty, to the promotion of accountability, economic justice and popular participation in development. Consequently, fourth, the Community seeks the cooperation of African non-governmental organizations (NGOs) in order to involve the peoples of Africa in the process of economic integration and to mobilize their skills and financial support. Women especially must be more actively drawn into development process.

7. These principles are necessary as a guide, especially in this era of institutionalization of human beings in the development process. They are worth reviewing for incorporation in the revised ECOWAS Treaty, as they constitute the ingredients par excellence of sustainable development.

(iii) Community Objectives: Abuja and Lagos

8. In terms of community objectives, Lagos does not seem to have much to learn from Abuja, as both reflect the standard provisions of African economic and cooperation and integration schemes, although Abuja is much more detailed and more clearly set out than Lagos. The main difference is in the promotion of the attainment

of community objectives where, as indicated below, Abuja places the accent on production whereas Lagos stresses the centrality of, and concern for, market integration.

(iv) Institutional Structure

9. The process of integration necessitates creation of suitable institutions to deal with the complex problem of linking the economic destinies of several nations. Indeed much of the success of the EEC is attributable to the wide range of institutions which have been instrumental in translating its programmes and policies into action. The Treaty of Rome established clear provisions not only for setting up these organs, but for a gradual transfer of initiative from member States to these supranational entities. A significant result of these built-in provisions is that integration among the member States of the Community has become a continuous process, whose scope is expanding along a previously determined time path. It is the continuity of this process which to a large extent has consistently increased the stake of the member nations in European Community programmes^{3/}.

10. While the institutions of the pan-African Community and those of ECOWAS are not so elaborate, both Abuja and Lagos recognize the development of adequate institutional machinery as an essential condition for successful coordination of development policies. Abuja, however, institutionally go much further than Lagos in meeting the prerequisites for building-up an integrating community.

11. The Abuja Treaty provides for the establishment of a Pan-African Parliament to ensure the involvement of the people in the

^{3/} S.K.B. Asante, The Political Economy of Regionalism in Africa: A Decade of the Economic Community of West African States (ECOWAS) (New York: Praeger, 1986), pp. 65-5.

'development and integration' process of the continent (Article 14). In this respect, the treaty reflects the current concerns about the role of the people and the democratic imperative in the process of integration.

12. The Lagos Treaty, on the other hand, does not institutionally provide a forum for exchange of views with interest groups or private sectors in the West African subregion-- trade unions, employers' associations, chambers of commerce, etc. --- who are directly interested in and likely to be directly affected by many of the provisions of the treaty and policies of ECOWAS⁴/. Hence ECOWAS can rightly be criticised for not having any popular roots, and because the people and institutions controlling it have little contact or involvement with the main in the street. The whole institutional structure of the ECOWAS scheme can be described as a brain-child of the elite, and there is no organ through which interest groups can bridge the elite-mass gap.

13. In the circumstances, Article 4 of the Lagos Treaty be amended to provide for a Parliament or Assembly possibly on the lines already suggested in the final report of the first meeting of the Sub-Committee on Institutional Matters held in Lagos in July 1991.

14. Abuja, also, unlike Lagos, provides for the establishment of Economic and Social Commission to comprise Ministers responsible for Economic Development, Planning and Integration of each member State. This is a special, high-powered Commission responsible, among other things, for coordination, harmonization and supervision of the economic, social, cultural, scientific and technical activities of the community secretariat, the specialized technical

4/ Ibid., pp. 73-77. See also S.K.B. Asante, West Africa January 1991.

committees and any other subsidiary body, and ensure their follow-up.

15. ECOWAS may not necessarily require such a body, which in the case of the AEC, is essential as the only competent organ in respect of economic development and integration matters, the rest, (for example, Council of Ministers composed of Ministers of Foreign Affairs) being political.

16. Instead, it would be desirable for ECOWAS to establish an Economic and Social Committee on the model provided for in Articles 193-198 of the Rome Treaty to be composed of representatives of producers, agriculturists, industrialists, transport operators, trade unions, merchants, artisans, etc.

(v) Decision-making Process

17. The decision-making process would seem to constitute one of the most contentious areas of regional economic groupings. This process sometimes creates tensions between the formal institutions of a grouping. A clear case in point is the most critical struggle between the council and the commission of the EEC which formed an element in the political stagnation affecting the Community during 1965 and 1966 from which the Commission emerged chastened^{5/}.

18. In the case of ECOWAS, there is no provision for voting under the treaty, neither is it made quite clear which institution is empowered to make a formal proposal as a first step in the decision-making process. This puts ECOWAS in a different, peculiar setting, as the PTA which followed it in 1981 makes provision for adopting decisions by consensus (Articles 6 (5) of PTA Treaty).

^{5/} S.K.B. Asante, "ECOWAS, the EEC and the Lome Convention", in D. Mazzeo (ed.), African Organizations (Cambridge University Press, 1984) pp. 171-195.

19. Abuja, on the other hand, is quite explicit on this troublesome issue of decision-making. It clearly states that the decisions of the Assembly and the regulations of the Council 'shall be adopted by consensus or alternatively by a two-thirds majority of member States' (Arts. 10 (4) and 13 (4)). The importance of having an alternative provision cannot be overemphasized. Experience has shown how decision making restricted to "consensus" or unanimity alone can become a major obstacle to positive action by an organization. The constant need for complicated deals, and the arduous efforts to arrive at a compromise indispensable for decision, often lead to immobility and obscure the text or resolutions. Thus a compromise is often reached at the expense of precision. Generally, also, the consensus requirement renders the decision making process a slow and inadequate one.

20. Closely related to this are the powers to bind member States and organs of a community to decisions and regulations. In the case of the Lagos Treaty, the powers of the Authority and the Council to bind member States to decisions are non-existence. The decisions and directions (like the PTA) are binding only on ECOWAS subordinate organs after ratification, usually by at least seven signatory States.

21. This is in marked contrast to what obtains in the Abuja Treaty where the decisions of the Assembly and regulations of the Council become binding on both member States and subordinate organs of the Community and these 'automatically enter into force thirty (30) days after the date of their signature by the Chairman of the Assembly' or the Council (Arts. 10 (2 and 3) and 13 (2 and 3)). In this regard, and what is more important, supra-national status has been accorded to the legislative organs of the Community, which are empowered to meet, on behalf of all, the major economic and political challenges which community members would otherwise be unable to tackle individually.

22. There is undoubtedly a good enough case for ECOWAS to critically review its decision-making process and model it on the provisions of Abuja, so as to enable it to combine thoroughness with speed of action and thereby remove the tendency to frustrate those member States who are eager and have taken the trouble to ensure that the community moves ahead.

23. It may be necessary, however, for Lagos to move a little beyond Abuja and make a distinction on issues where consensus would be required and those that could be taken by a two-thirds majority.

(vi) Approach to Integration

24. Of particular importance, too, is the kind of approach to the process of integration that will be most effective in realizing the potential of the African continent for the benefit of its populations. Unlike ECOWAS, PTA or ECCAS which have focused attention for more than a decade on market integration, the new Community is based on a certain number of key sectors with a great capacity for integration, notably industry, agriculture, transport and communications, energy, science and technology, trade, money and finance.

25. Thus primarily, Abuja adopts production-focused approach or, specifically, collaboration for expansion and diversification of material production. This is a new approach that emphasizes broadening the regional production base and that gives priority to deliberate measures for increasing industrial and agricultural production in the framework of a variety of cooperative schemes and arrangements.

26. The approach of Abuja is based on the premise that expansion of mutual trade can take place only if the African countries are able to produce the desired merchandise in sufficient quantities to meet each other's demand. The possibility of increases in mutual

trade is a crucial incentive to expansion of production, but it cannot be taken for granted that the desired expansion will automatically follow^{6/}

27. In this respect, Abuja breaks with the past and the present tendencies which looked at economic cooperation and integration only in the context of traded goods (which are not produced locally) and financial arrangements. It aims at strengthening the capacity of African States to industrialize and strengthen agriculture and mining among other productive sectors of their economies so as to provide goods to be traded in a common market.

(vii) The Scope of Abuja

28. Abuja breaks new grounds in terms of scope and highlights a number of critical development sectors on which Lagos is silent but which pose enormous challenges to the process of African development. It sees the meeting of these challenges mostly within the context of regionalism.

29. The first is environment (Art. 58), which has become a major developmental challenge in Africa. Future prospects for development depend on maintaining healthy environments and on rehabilitating degraded ones. Consequently, Abuja stresses the need for promotion of healthy environment by adopting not only national, but more importantly, subregional and continental policies, strategies and programmes, since much of the environmental problems of Africa---desertification and river basins development, for example---go beyond the limits of national borders.

^{6/} S.K.B. Asante, African Development: Adebayo Adedeji's Alternative Strategies (London: Hans Zel, Publishers, 1991) pp. 104-7.

30. One other distinguishing feature of Abuja is, secondly, its response to the rapid changes in scientific and technological developments which have generated a new industrial revolution whose consequences for Africa are enormous. To meet this challenge, Abuja commits community members to strengthen their scientific and technological capabilities in order, inter alia, to bring about the socio-economic transformation required for improvement of the quality of life of their populations; to reduce their dependence and promote their individual and collective technological self-reliance (Art.51).

31. A closely related aspect, thirdly, is the importance which the Abuja Treaty attaches to education, training, research and culture, thus reflecting the fact that economic development, or any kind of economic change, does not occur in isolation but is part of a much larger and more general cultural transformation. Abuja therefore calls upon the community members to "strengthen cooperation in the field of education and training, coordinate and harmonize their policies in this field" with a viewing to "training persons capable of fostering the changes necessary for enhancing social progress and the development of the continent" (Art. 68). Regional approaches to education, training and research have a positive long-term effect on economic and political cooperation in the African region. It enables institutions to be built that are more indigenous, economical and better suited to local conditions.

32. To consolidate their cultural identity, Abuja commits African States to pursue not only the objectives of the cultural Charter of Africa but also to ensure that "development policies adequately reflect their socio-cultural values" (Art. 69). In this respect, Abuja responds adequately to the cultural reality of developing societies as recently analyzed by development scholars like S.C. Dube in Modernisation and Development: the Search for Alternative Paradigms (1988) and Thierry Verhelst in No Life Without Roots: culture and Development, 1990.

33. Fourthly, Abuja stresses the need for strengthening private sector participation in regional industrialization and development effort. There are provisions for the coordinated establishment of stock markets and for the free movement of capital within the Community. Freeing labour and capital flows within Africa would improve growth prospects by creating conditions---through increased competition and wider market access---for mergers, acquisitions, joint ventures, and other forms of horizontal and vertical integration.

34. Fifthly, Abuja introduces another significant element, which is generally absent, not only in ECOWAS but also in all the past and existing economic cooperation schemes in Africa. This is the sanction provision relating to non-payment of contributions (Art. 81). Member States with an outstanding contribution to the budget of the Community "shall not participate in either the vote or decisions of the community" and eventually "cease to enjoy other benefits arising from the treaty as well as the right to speak".

35. In this regard, the new pan-African Treaty attempts to solve the perennial financial crisis that has bedeviled many an African economic cooperation and integration arrangements, particularly ECOWAS. For example, according to the April 1991 Memorandum by the Executive Secretary, "as at 20 September, 1990, arrears of contributions were estimated at UA 14 million or US\$18.2 million... Non-payment of contributions greatly hampers the implementation of cooperation programmes, as most of the activities in the community cooperation programmes are financed from contributions paid by member States".

36. A further significant novelty about the new Community is its taking into account the special economic and social difficulties of Africa's least developed countries, as well as the land-locked and island States. Abuja, in Article 79, would recognize the need to accord these countries "special treatment". This could include

temporary exemptions from the full application of some treaty provisions and assistance from a new Solidarity, Development and Compensation Fund.

37. On the whole, this brief discussion paper would seem to make evident what Lagos can learn from Abuja to enhance its viability and to enable ECOWAS to meet confidently the emerging challenges of the 1990s and beyond. It also makes clear that it is only through a successful linking up of ECOWAS and other subregional groupings' activities, both horizontally and vertically, that a way will be paved towards the creation of a meaningful and functional African Economic Community.