

Comparing the Abuja Treaty and the AfCFTA Agreement

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African economic integration has a long history. Both the African Union (AU) and its predecessor, the Organisation of African Unity (OAU), which was Africa's first post-independence continental institution,¹ have adopted ambitious integration schemes.

The Abuja Treaty was adopted in 1991, at a time when deep economic integration was believed to contain the answers to Africa's economic woes. Its ultimate objective was to establish the African Economic Community (AEC), the deepest form of economic integration. The establishment of the AEC entailed six stages, with integration taking place through intergovernmental enactments, not market-led integration. The Abuja Treaty entered into force on 12 May 1994 and foresaw political unity on the African continent.

The Abuja stages entailed, in summarised fashion, the following:

1. **First Stage:** Strengthen existing Regional Economic Communities (RECs) and establish RECs in regions where they do not exist.
2. **Second Stage:** Stabilise tariff barriers and Non-Tariff Barriers, customs duties, and internal taxes at the REC level.
3. **Third Stage:** Establish a Free Trade Area (FTA) and a Customs Union (CU) in each REC.
4. **Fourth Stage:** Establish a CU at the continental level.
5. **Fifth Stage:** Establish an African Common Market, harmonise monetary, financial and fiscal policies, and allow free movement of persons and the rights of residence and establishment.

¹ The OAU was established in 1963. The African Union was launched in Durban on 9 July 2002.

6. **Sixth Stage:** Establish an African Central Bank and a single African currency, set up the Pan-African Parliament elected by continental universal suffrage, and implement the final stage of the structures of the executive organs of the AEC.²

The aims of the Abuja Treaty have not been achieved. It has set the bar too high in terms of national sovereignty sacrifices, and deep economic integration commitments. The RECs' overlapping memberships and low levels of industrialisation in the member states contributed to the delays and challenges. Many of these problems are still not resolved.

When [the AU was launched in July 2002](#), the global context had seen important changes. In 1989 the Berlin Wall came down and communism ceased to be the governing system in many countries. Apartheid rule in South Africa came to an end in 1994. The World Trade Organisation (WTO) was established on 1 January 1995, providing for a rules-based multilateral system based on liberal free trade values.

In 2012, the AU decided to establish a continental FTA to which all 55 Member States of the AU would belong. This arrangement became known as the African Continental Free Trade Area (AfCFTA). It tackles the problems of the 21st century and sets the bar lower than the Abuja Treaty; only a continent-wide FTA is foreseen. The existing REC FTAs and Customs unions will continue to function.³ The AfCFTA founding Agreement also adopts, for the first time, the preservation of the *acquis* (what has already been established remains applicable) as one of the founding principles of African integration.⁴

The AfCFTA has been adopted as a framework for Africa's industrialisation and the developments of value chains. These are new priorities. AfCFTA Agreement also includes Protocols on Trade in Services, Digital Trade and one on Women and Youth in Trade.

There are differences between the AfCFTA and the AEC, which flow from different integration strategies and different historical contexts. The AU decision to establish the AfCFTA was taken more than 20 years after the adoption of the Abuja Treaty. Continental and multilateral conditions changed quite markedly during the preceding two decades.

- The Abuja Treaty has a time-bound integration agenda with provisions on supra-national institutions. The AfCFTA is member-driven and does not establish an international organisation.

² Ibid.

³ Art 19(2) AfCFTA founding Agreement and Art 8(2) AfCFTA Protocol on Trade in Goods.

⁴ Art 5(f) AfCFTA founding Agreement.

- The AfCFTA objectives are to “progressively” liberalise trade in goods and services and to “cooperate” in other trade related areas.⁵ The creation of a liberalised market for goods and services will require “successive rounds of negotiations”.⁶
- The Abuja Treaty does not explicitly provide for a continent-wide FTA, as the AfCFTA does. It is left to the parties to the Abuja Treaty to adopt rules of origin for trade in goods during the third stage.⁷ The AfCFTA rules of origin must be negotiated and adopted before trade in goods among the AfCFTA State Parties can begin.⁸
- Under the AfCFTA the REC FTAs and customs unions will continue.⁹ Under the Abuja Treaty the RECs will, by implication, disappear as the level of integration deepens and an African customs union is formed during stage four.
- On MFN treatment there are clear differences. Article 37 of the Abuja Treaty says the Member States *“shall accord one another... the most-favoured-nation treatment. In no case shall tariff concessions granted to a third State be more favourable than those applicable pursuant of this Treaty”*. The AfCFTA prioritises reciprocity, also in respect of MFN treatment.¹⁰ Article 4 of the AfCFTA Protocol on Trade in Goods says nothing shall prevent a State Party from concluding or maintaining preferential trade arrangements with Third Parties, and that any advantage, concession, or privilege granted to a Third Party is extended to other State Parties on a reciprocal basis.
- Under the Abuja Treaty the Member States agree to achieve progressively the free movement of persons.¹¹ The AfCFTA Agreement does not contain provisions on the free movement of persons or the right to residence. The AfCFTA Protocol on Trade in Services does provide for cross-border movement of service consumers and under Mode 3 for the establishment of commercial presence, which frequently allows for experts to deliver services in another jurisdiction.

⁵ Art 4 AfCFTA founding Agreement.

⁶ Art 3(b) AfCFTA founding Agreement.

⁷ Art 33 of the Abuja Treaty.

⁸ Art 13 AfCFTA Protocol on Trade in Goods.

⁹ Art 19(2) AfCFTA founding Agreement and Art 8(2) AfCFTA Protocol on Trade in Goods.

¹⁰ Art 18 AfCFTA founding Agreement.

¹¹ Art 43 Abuja Treaty.

- There are differences in terms of legal status and the relationship with the AU. The “Community” is the structure for economic integration established under Article 2 of the Abuja Treaty. It is an integral part of the OAU¹². There is no separate Secretariat.¹³ The AfCFTA, on the other hand, has a separate Secretariat, based in Accra, Ghana. It shall be a *“functionally autonomous institutional body within the African Union system with an independent legal personality. The Secretariat shall be autonomous of the AU Commission”*.¹⁴

The relationship between the AfCFTA and the AEC is not officially clarified. The Abuja Treaty was ratified and entered into force but seems to serve more of an inspirational function now. The AfCFTA is more pragmatic and shaped by the challenges of the day. It is member-driven and decisions are taken by consensus..

When the Abuja Treaty was negotiated, South Africa was still under apartheid rule and international sanctions. Pretoria was at odds with the rest of the continent. After Nelson Mandela became South Africa’s first democratically elected President in 1994, South Africa was accepted as a member of all Africa’s political and economic structures¹⁵. This brought the continent’s most industrialised economy – with very specific offensive and defensive interests – to the table where African economic integration and trade relations were henceforth discussed and negotiated. In this development may lie an important part of the explanation of the present state of the African integration debate.

¹² Art 1 Abuja Treaty.

¹³ The General Secretariat of the OAU/AU is the Secretariat of the AEC.

¹⁴ Art 13 AfCFTA founding Agreement.

¹⁵ It joined SADC as its 11th member, in April 1994, following the first democratic election in that month. See <https://www.sadc.int/member-states/south-africa>

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