

Could the AfCFTA be an African Platform for global Engagement?

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Recent statements from African Union (AU) sources hint at a novel role for the African Continental Free Trade Area (AfCFTA): to serve as platform which will allow Africa to speak with one voice on global affairs. Even *The Economist*, in a recent article on the “New Scramble for Africa”, seems to hold this view: “On the structural front, there could be strength in unity. The African Continental Free Trade Area... could be a big plus, giving the continent a single voice in some negotiations.”¹

The AfCFTA will only be able to do so if endowed with the necessary powers and institutions. Does the AfCFTA have a mandate to speak on Africa’s behalf? About what? What will this “one voice” say and which institution will articulate Africa’s concerns and preferences? How will this tally with the national policies of the 55 AU Member States, who may all join the AfCFTA? Why can’t the Assembly of the Heads of State and Government of the AU (an existing body at the apex of an organization to which all African States already belong) not be this African mouthpiece? The AU’s mandate is wider than that of the AfCFTA.

International institutions are not like national Parliaments. They are not democratically elected and do not enjoy inherent powers. Only in rare instances and in deep integration arrangements such as the European Union (EU) will supra-national institutions be able to exercise jurisdiction over matters normally under the control of the governments of the Member States. Supra-nationality has far-reaching implications. (As Brexit shows.) Clear legal provisions are necessary to demarcate national and supra-national powers.

Africa does not have examples of successful supra-national institutions. They are not found in the RECs. This is not surprising. African countries are at vastly different levels of economic development and have their own relationships with external parties. African Governments are protective of their sovereignty.

These caveats do not mean that one African voice will not bring benefits in specific areas. The report in *The Economist* referred to above writes that countries such as China, India, Turkey, the United States and the EU have embarked on new investment, military, mining and trade initiatives in Africa. “This suggests that the continent will increasingly be a place where international rivalries play out.”²

If there is an African forum to articulate joint policies about foreign investment in Africa



and the terms of external trade, it could be a good thing. However, the AfCFTA is not designed as a platform for developing policies and conducting negotiations with third parties. Its function is to boost intra-African trade and to improve cooperation among its African Members.

Africa has been speaking with one voice in the WTO (it wants to resurrect the Doha Development Agenda and opposes the fragmentation for which the Trump administration is blamed) but this has been happening for some time. It has been less successful in opposing the EU's drive to conclude Economic Partnership Agreements (EPAs) with African nations.³

An effective and new one-voice capability will require an Africa with a sufficiently high level of unity and a joint view on many aspects of a changing international environment. Nuanced and specific responses will have to be worked out in order to have a meaningful impact. It will not be easy to reach consensus about the underlying issues, which often involve policies of AU Members which allow foreign military bases (Djibouti has several), invite foreign investment in their domestic mining sector, or borrow heavily from specific foreign governments. It should be remembered that AU institutions as well as those of the AfCFTA take decisions on substantive issues based on consensus.⁴

In the days of the cold war it was easier to opt for non-alignment. The challenge now is to become pro-active and to navigate a very different and fast-changing global and domestic landscape. *The Economist* reports that “*there are 10 000 Chinese businesses on the African continent. China’s dramatic investments have encouraged other countries, most notably India, to follow suit. At the same time, China is changing the terms of its engagement, increasingly cashing in economic connections for political and military ties.*”⁵ China is not channeling its African presence through BRICS (which has one African member, South Africa.) And it is not the only foreign player with ambitious plans for its African presence.

Do the principles underpinning the AfCFTA and at its institutions shed light on a “one voice” prospect? The first general objective listed in the AfCFTA Agreement is to “*create a single market for goods, services, facilitated by movement of persons in order to deepen the economic integration of the African continent...*”⁶ The AfCFTA is inward looking. It is also a member-driven arrangement,⁷ which implies the Members (not a new institution) are in charge. The forum through which the AU members speak, is the Assembly. It consists of Heads of State and Government of the African Union.⁸

The AfCFTA will not be a typical stand-alone Free Trade Area (FTA), but a new trade promoting programme of and within the AU. The Assembly is the AfCFTA’s apex body and consists of the Heads of State and Government of all AU Member States, including those that may not be AfCFTA Members. It shall provide oversight and strategic guidance on the AfCFTA, including the Action Plan for Boosting Intra-African Trade (BIAT).⁹

The AfCFTA is not endowed with legal personality. The Secretariat is the only body which may undertake technical tasks, but its functions are still to be decided. It shall be established by the Assembly, which shall decide its nature, location and approve its structure and budget.¹⁰ Article 13(3) of the AfCFTA Agreement says the Secretariat “*shall be a functionally autonomous institutional body within the African Union system with an independent legal personality*”. There cannot be many other examples of such an obvious compromise formulation.

The conclusion must be that the AfCFTA is firmly embedded within the AU scheme of things. If there will be a voice speaking on behalf of Africa, it will be the (not so new) AU voice (perhaps) talking through the AfCFTA structures. Hopefully the message will be new and directed at contemporary challenges.

¹ *The Economist*, March 9, 2019 at 20.

² *Ibid* at 18.

³ The SADC EPA entered provisionally into force in 2016. The ESA countries and Ghana have concluded Interim EPAs, while Kenya is keen to conclude a trade deal with Brussels.

⁴ Art 14 AfCFTA Agreement.

⁵ *The Economist*, March 9, 2019 at 18.

⁶ Art 3 AfCFTA Agreement.

⁷ Art 5 AfCFTA Agreement says, “*driven by Member States of the African Union*”.

⁸ See the definition of *Assembly* in Art 1, AfCFTA Agreement.

⁹ Art 10(1) AfCFTA Agreement.

¹⁰ Art 13(1) AfCFTA Agreement.