REVIEW I of Regional Developmentalism through International Law – Establishing an African Economic Community, Jonathan Bashi Rudahindwa, Routledge, 2018

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Monographs on the legal dimensions of regional integration in Africa are few. Notable works focusing on what has been described as the second wave of regional integration in Africa include Kofi Oteng Kufuor's *The Institutional Transformation of the Economic Community of West African States* (2006); James Thuo Gathii's *African Regional Trade Agreements as Legal Regimes* (2011); Richard Frimpong Oppong's *Legal Aspects of Economic Integration in Africa* (2011); Jerry Ukaigwe's *ECOWAS Law* (2016); and Jorg Kleis' African *Regional Community Courts and their Contribution to Continental Integration*

(2016). Dr Jonathan Bashi Rudahindwa's *Regional Developmentalism through International Law – Establishing an African Economic Community* is a significant addition to this growing body of scholarship. The work covers a lot of ground which cannot be justly addressed in this short review. Thus, I have chosen to focus on only a few issues.

The central thesis of the book is the need for African countries to adopt "a different approach to regionalism based on regional developmentalism, which rather than focusing primarily on trade liberalisation and market integration, would be used to promote key sectors in the RECs economies and to improve specific capabilities more likely to promote sustained economic growth and development across the continent" (pp, 37-38). It is debatable whether this is a new idea. This is because a careful examination of the treaties of the African RECs reveals that they are not focused only on trade liberalisation and market integration, but indeed aim to pursue other objectives. As Gathii observes in his book "African RTAs do not merely centre integration around a vision of market-led integration. They are also designed as forums for a variety of initiatives...." (Gathii at p. 20).

In my opinion, Rudahindwa's contribution lies in his articulation of the need for institutions and legal frameworks to reflect these multiple objectives of African RECs. In this regard, he ably demonstrates how the specific objectives of NAFTA, ASEAN, MERCOSUR and the EU have informed the nature of the institutions that manage their respective organisations and their legal frameworks, including how they address issues such as the relationship between the laws of the organisations and their member states, the bindingness of agreed commitments and laws, and dispute settlement (pp. 63-117). In his words, "each integration model requires a specific set of legal frameworks which is supposed to reflect the particular circumstances of the region and designed to help achieve the objectives contained in their RTAs" (pp. 79-80)

The demands of trade liberalisation and market integration are clearly distinguishable from other forms of integration or co-operative arrangements that are contained in the African RECs' treaties. While some of these forms of integration or co-operative arrangement may work well in a "flexible" legal

setting, the same case cannot be made with respect to trade or market integration. The remarkable thing about African RECs is that, often,the same institutions and legal frameworks are provided to deal with both market integration and the other forms of co-operative arrangements; this is not entirely appropriate.

Rudahindwa's discussion on the EU (pp. 93-117) focused mainly on its market integration aspect and missed an important feature that could have been helpful to his discussion on the need to align institutions and legal frameworks to distinct objectives. In Europe, before the Treaty of Lisbon, the 1992 Treaty of Maastricht created the European Union as a single body but with "Three-Pillars". The Pillars consisted of the European Communities, Common Foreign and Security Policy, and Cooperation in Justice and Home affairs. The European Communities Pillar operated with supranational features, with principles such as direct effect and supremacy both of which are discussed inRudahindwa's book (pp. 106-111). The Common Foreign and Security Policy, and Cooperation in Justice and Home affairs wereintended to give flexibility and were largely intergovernmental in nature(see generally, Eileen Denza, T*he Intergovernmental Pillars of the European Union*(2002). Scholars have noted that the Pillars were never formalised and that there was blurring of pillars' borders leading to a process of crosspillarisation. However, the key point here is the realisation that different areas of integration may demand different institutional structures and legal frameworks.

It can be argued that the failure to clearly distinguish between market integration and other forms of co-operative arrangements, and to provide appropriate institutions and legal frameworks for each have resulted in great confusion and is the bane of African RECs. As Erasmus has noted, "trade and integration involve unique legal disciplines; their effective implementation requires binding pronouncements about the nature and scope of the commitments undertaken by state parties. When this is not the case, unpredictability and unfettered executive discretions become the "norm"" (Gerhard Erasmus, The COMESA Court of Justice Clarifies Important Jurisdictional Issues). Similarly, Rudahindwa argues that one of the two key requirements needed for regional processes which are meant to progress towards a deeper level of integration (in this case, a Common Market) is

supranational institutions (p. 130)

The same level of legal discipline and restriction of executive discretions may not be necessary regarding co-operative arrangement to develop common infrastructure, foster regional industrialisation; encourage cross-border tourism, or some other developments. An intergovernmental structure embedded in a flexible legal regime may be appropriate in such settings.

Rudahindwa's discussion on harmonisation of law and the African Economic Community (AEC) is interesting. In that discussion, he focuses particularly on the Organisation for the Harmonisation of Business Law in Africa, which although not a regional integration organisation as such aims to contribute to the advancement of the objectives of the AEC. Rudahindwa is somewhat critical of the OHADA approach to harmonisation (more appropriately unification) which is top-down and highly centralised. While his criticisms are legitimate, it cannot be denied that, overall, OHADA has been a successful initiative that has resulted in the modernisation of the laws of the participating states. It would have been interesting for Rudahindwa to explore mutual recognition – a subject addressed in the discussion on the EU (pp. 111-113) - as a path to harmonisation within the AEC. Article 11 of the Protocol on the Establishment of the East African Community Common Market provides for the mutual recognition of academic and professional qualifications granted, experience obtained, requirements met, licences or certifications granted, in other Partner States. The development of a continental framework for mutual recognition of defined subject matters could be an important medium for fostering regulatory competition and harmonisation within the AEC.

To complement the top-down approach to harmonisation adopted in OHADA, and indeed other RECs in Africa, it can be argued that a bottom-up approach spearheaded by non-state institutions is a yet untapped source for harmonisation of laws within the AEC. In the spirit of comparativism – an important aspect of the methodology that informs Rudahindwa's monograph - it is worth noting that such private initiatives aimed at harmonisation of laws are not uncommon in other parts of the world. In Asia, there is a private initiative by scholars and academics that aims to create a model law called the Principles of Asian Contract Law. There is also the Asian Principles of Private International

Law that was finalized in 2017; this was a project undertaken by private international law scholars. In Europe, there was the Commission on European Contract Law (the Lando Commission) made up of primarily academics, independent and not representatives of specific political or governmental interests. An important output of the Commission is the Principles of European Contract Law. In the Caribbean, there is the Organization for the Harmonisation of Business Law in the Caribbean (OHADAC), which since its formation in 2010, has already produced a model law of commercial companies, principles on international commercial contracts, and there are projects for the harmonisation of private international law and arbitration law. There is scope for African scholars to undertake a similar initiative.

In conclusion, Rudahindwa's monograph invites a re-assessment of the institutional structures and legal frameworks that are necessary to support the multiple objectives that are pursued by RECs in Africa. It is a valuable and excellent addition to the existing scholarship.

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