The Emergent African Union Law - Conceptualization, Delimitation and Application. Eds. Olufemi Amao, Michele Olivier, Konstantinos D Magliveras

By:

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This edited collection of 24 Africa experts with diverse academic and practice focused backgrounds is divided into 5 parts and 24 chapters. The focus of the book is to establish African Union (AU) law as a focal point for the development of African countries. It provides a rich vein of scholarly literature which might not always be apparent to international researchers and practitioners. The ambition is to use regional integration law as a springboard for legal and socio-economic growth by avoiding national law failures that have undermined the development of the African continent.

The book opens with Roadmap to the Emergent AU Law. Here Femi Amao lays down a pathway for AU law as an underexplored and unappreciated legal system with potential solutions to the many intractable problems confronting Africa. There is a move from national or state sovereignty towards supranational based solutions. He rightly notes that AU law is clearly not as advanced as European Union (EU) law but there is justification for investigating this emergent body of law.

Part 1 (Scoping African Union Law) examines the concept of AU law as a key element in driving continental integration. In chapter 1, *Conceptualising AU Law within the Constitutional Framework of the AU*, Michele Oliver tries to establish AU law as a distinct body of rules. She is successful in examination of jurisprudence, history, politics, and economic justifications for regional integration through constitutional instruments and soft law secondary sources. Rightly, the author notes the tension between national and regional powers which requires enlightened self-interest towards regional law based governmental accountability and good governance.

Interestingly, Konstantinos Magliveras in *The Implications of AU Law: Conceptual Analysis with Emphasis on Institutional Consequences* established the primacy of the EU approach, whist noting that the AU needs to develop its own unique approach separate from that seen in EU law and the Organisation of American States. Femi Amao concludes part 1 by *Framing AU Law through the Lenses of International Constitutionalization and Federalism*. The author draws useful insight into EU law but is able to establish the Constitutive Act of AU law as a constitutional and social contract instrument distinct from the ineffective failed Organisation of African Unity (OAU) model. The chapter is futuristic in trying to establish an African federal regime over this highly diverse continent.

Part 2 (Harmonisation and Integration as Drivers of AU Law) reviews potential AU law components through competition law, investment dispute resolution, consumer protection and financial institutions. Kamala Dawar and George Lipimile in chapter 4 review *Harmonization and Integration in Africa: The Case of Competition Law and Policy*. This chapter considers competition law as an aspect of cross border trade driven by the African Continental Free Trade Area (AfCFTA) and the activities of African Regional Economic Communities. There is

a creditable move to set up harmonised competition principles through AU law and institutions.

The specialist posture continues with Pablo Iglesias-Rodriguez in *The AU and Global Financial Standard Setting*. The author asserts the need for African States to adopt a model of economic and financial integration based on the global financial system. It exposes barriers to African countries and encourages a more proactive approach by African governments. *The Evolution of the AU Private Business Structure* by Iyare Otubor-Olubor considers business and people mobility across the continent which enhances investment and competitiveness through harmonization, cross border businesses creation and registration. Also Onyeka Osuji and Oluwafikunayo Taiwo look at the *Contextual Centrality of International Arbitration Framework for AU Legal Order*. The authors cogently argue for a new regionalism approach or AU arbitration framework that avoids expensive international settlement of disputes that does not take Africa's needs into account.

In chapter 8, Emmanuel Kolawole covers *The Statute of the Pan-African Intellectual Property Organisation: A Human Rights Perspective*. The chapter focuses attention on integration of intellectual property law. Interestingly, the author prefers legal co-ordination as opposed to harmonization due to disparities in technological and economic development across the continent.

Part 3 (Addressing Civil and Political Challenges through African Union Law: Perspectives) focuses on civil and political hurdles to establishment of AU law. *Is the AU Best Placed to Advance Cross-Cutting Gender Rights' Harmonization of Customary Laws?* This important question was addressed by Adaeze Okoye. This interesting chapter establishes customary law as a significant legal order that can contribute to AU human rights development. There is no intrinsic contradiction between the two regimes and their legal co-existence would be beneficial to human rights. In chapter 10, Eki Yemisi Omorogbe considers *The AU and Disputed Presidential Elections*. Here the author reviews laws, policies and practice to highlight the importance of credible elections and democracy as bulwarks of peace, stability and development. Radical suggestions are made to prosecute incumbent Presidents that perpetrate unconstitutional change of governments for crimes against humanity. As the author observes, this would require substantial change in the AU's response mechanisms.

Chidebe Mathew Nwankwo asks *Human Rights, Statelessness, and the Right to Nationality (R2N) in Africa: What can Vertical Structures Achieve?* This chapter is located within extant problems of refugee populations, stateless individuals, insecurity, terrorism and a worsening humanitarian crisis on the continent. Similarly, Cristiano d'Orsi in chapter 12 looks at *Combating Terrorism and Managing Asylum Seekers and Refugees under AU Law*. The author notes a lacunae in some African states that have failed to adopt robust anti-terrorism legislation. In the same vein relating to crime, Benedict Abrahamson Chigara considers *The Quasi-Supranational AU and the International Criminal Court.* The topic is reviewed from the prism of international relations. It among others, considers the confrontation between the AU and the International Criminal Court's alleged Western bias.

Part 4 (Addressing Socio-Economic Challenges through African Union Law: Perspectives). In this segment, there is further examination of socio-economic problems in validating AU law. The critical issue of sustainable development goals through Agenda 2063 is considered by Chisa Onyejekwe in *Development of AU Law: Tax Harmonization and Regional Integration towards Achieving Social Structures in Africa*. The author makes specific policy recommendations to deliver the goals of Agenda 2063. In chapter 15, Robert Home deals with *Land, Property and Human Rights in AU Law and Policy*. It tackles resource rights, colonialism and the rights of indigenous people. Rua Garrido and Aua Balde determine *The Right to Education in AU Law* as a developmental right for African populations.

In chapter 17, Gino Naldi looks at The *Contribution of AU Human Rights Agreements to an Emergent AU Law*. This chapter seeks to establish enforceable human rights within distinctive AU jurisprudence. Also on sustainable development is Sustainable Development and the *AU Legal Order* by Eghosa Ekhator. This chapter makes the point that AU instruments on sustainable development are a key ingredient of an emergent AU legal order.

Part 5 (Enforcing African Union Law: Perspectives) is rather important, as enforcement determines the failure or success of regional integration law. Here, the authors evaluate enforcement challenges and provide a path out of existing difficulties. In this regard, chapter 19 by Konstantinos Magliveras investigates *The Several Sanctioning Regimes in the AU: Analysis and Synthesis*. The author

exposes the gap between the OAU and AU by which the latter institutionalises the toothless sanctions regime of the former. It highlights the use of automatic sanctions for instance in non-payment of budgetary contributions which removes politics from enforcement.

Michele Olivier considers, *Enforcement Mechanisms in AU Human Rights Treaties: Lessons for the Wider AU* Law in chapter 20. The author reviews effective enforcement at the national and international level with the South African Constitution showcased as providing a beneficial regime for the enforcement of African human rights. That said, the author makes the point that the South African Constitution remains supreme. *The AU and Issues of Institutional Capacity and Enforcement* by Ovo Imoedemhe explores the Paul Kagame Report on institutional reforms among others. There is clearly a need to move away from weak fragmented bodies to robust and effective AU institutions. Regis Yann Simo looks at *The (Domestic) Enforcement of AU International Economic Law Instruments: Exploring the Desirability of Direct Effect*. The issue of direct effect is considered in relation to AfCFTA and African regional law instruments. It argues that the absence of standing for private and legal persons undermines regional cohesion.

In chapter 23, Rhuko Ako considers *Propagation and Enforcement of AU Law: Perspectives from the Peace and Security Arena.* It is evident that the African Peace and Security Architecture (APSA) as well as the African Governance Architecture (AGA) are helpful in the development of new norms and practice. Femi Amao and Michele Olivier in the concluding chapter 24 explore *AU Law and Its Future: Reform and the Kagame Report*. The authors map out the emergent AU legal order that could deliver modern aspirations of Africans by avoiding colonial legacies in national legal regimes. It summarises the scholarship of this interesting book as it looks towards the future.

Overall, the book constitutes a rich source of academic material and insight into an emergent body of law. One might argue that there is an underlying optimistic stance in a book that tries to distil concepts, principles and practices of AU law which might not be familiar to the nation states that constitute the AU. One other minor criticism is that the book could have provided chapters focused on good governance, accountability and anti-corruption that is urgently needed in the continent. However, the authors in the last chapter expressly observed that it would have been impossible to contain all aspects of AU law in

one volume, thus providing the possibility of further volumes on this interesting topic. Constant references to EU law throughout the book indicate the substantial disparity between AU and EU law regimes as the latter is further down the evolutionary path. In the end, establishing the foundation, patterns and prospects of AU law is a useful scholarly endeavour that deserves commendation.

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