Book Review III of Asymmetric Power Relations and International Trade Law: A Legal Analysis of Economic Partnerships Agreements

By:

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On the foothills of the Latin American Debt Crisis in 1981 and the beginning of the policy sequence which John Williamson would later famously baptise as the "Washington Consensus", the World Bank issued its report on Accelerated Development in Sub-Saharan Africa: An Agenda for Action, better known as the "Berg Report". Among its prescriptions, the Berg Report recommended that African countries should embrace regional integration, "which allows production for a larger regional market" and guarantees "the reduction of long-term obstacles to development." The obstacles identified by the report included small markets, land-locked states, poor infrastructure, and informal trade.

At the time, this recommendation was both timely and somewhat dated. Three years earlier, mutual antipathy between the leaders of Tanzania and Uganda

descended into an international armed conflict. Until the previous year (1977), both countries were members of the East African Community established in 1967 under the Treaty for East African Cooperation. Elsewhere in Africa, in 1975, the leaders of West Africa launched an ambitious regional integration mechanism in the Treaty of the Economic Community of West African States (ECOWAS), the first such initiative to transcend patterns of colonial dependency.

Regional integration as a preferential trade regime finds its basis in the exception to the non-discrimination principle under Article XXIV of the General Agreement on Tariffs and Trade (GATT). Inebu Agbo-Ejeh's study on Asymmetric Power Relations and International Trade Law queries much of the accepted wisdom about the trade benefits of regional integration for Africa, arguing that such arrangements suffer from an underlying flaw of the multi-lateral system which "is asymmetrical, promoted by the core to serve its interests." This, she argues, is rooted in norms, institutions and narratives of domination. Normatively, it is written into the rules of the international trade system, including bilateral trade agreements (BTAs) and regional trade agreements (RTAs), such as Africa's regional integration treaties. The institutions of international economic law police and implement these asymmetries.

Underlying these unequal normative and institutional arrangements, Dr. Agbo-Ejeh suggests, is a narrative of some antiquity which promotes "the rhetoric and myth of African trade and civilization" as having been "introduced mainly by European powers." She convincingly contests this narrative even as she seems to concede that its legacies are far-reaching and have rendered the benefits of the multilateral trade system "inaccessible to developing countries." To illustrate this point, Dr. Agbo-Ejeh examines in detail the contours of the European Union's Economic Partnership Agreements (EPAs) with Ghana and Nigeria.

Dr. Agbo-Ejeh argues that this power asymmetry originates in colonial relations between Africa and Europe. The building blocks of her argument deserve to be unlayered. It is hardly arguable that the foundations of the contemporary multilateral trade system have benefitted substantially from the exploitation of developing countries through both the slave trade and colonial rule. To this

extent, Ha-Joon Chang has a point when he suggests that the developed countries, having derived the benefits of this history, "kicked away the ladder" of development and then became apostles of a "rule-constrained" trade system designed by them essentially to preserved their advantage.

The developed countries achieved this through both functional subordination and institutional integration of former territories to their colonial metropoles. Functionally, the metropolitan countries aligned colonies, subordinating them into relations of dependency through foundational investments in both hardware (such as infrastructure) and software (such as knowledge systems). The legal basis for this was authored into colonial common law in Lord Sumner's infamous formulation of the principle of terra nullius in Re Southern Rhodesia, claiming that African kingdoms were "so low in the scale of social organization that their usages and conceptions of rights and duties are not to be reconciled with the institutions or the legal ideas of civilized society." Humphrey Sipalla is right when he asserts that the colonial system in Africa began by erasing "ways of being and knowing" in focused attacks on "sites of knowledge and power" so that "the next generations have but the Empire's benevolence to look to for answers for everything from 'how to cure a cold' to 'who is God'."

Speaking after his fall from high office, in July 1885, Jules Ferry, president and prime minister of France, described colonies as entailing "a search for markets for French industry threatened by foreign competition." The British Colonial Development Act of 1929 went a step further, empowering the Secretary of State for the Colonies to "make advances to the Government of any colony or of any territory…, to aid and develop agriculture and industry in the colony or territory, and thereby promoting commerce with or industry in the United Kingdom." Through such investments, the foundations of the functional division of labor between the primary production of former colonies and the value-added processing of colonial metropolises were laid.

Institutionally, these imperatives are also entrenched in the political geographies of regional integration in Africa. Osita Eze's pioneering study of The Legal Status of Foreign Investments in the East African Common Market points out that most of Africa's post-colonial regional integration arrangements "are based on pre-independence links and institutions. For instance, the origins

of the East African Community and Common Market are traceable to colonial origins in 1909." Similarly, Hubert Deschamps demonstrates that contemporary regional integration arrangements in former French territories primarily have their origins in the colonial convenience of The French Union. The post-colonial association agreements between the EU and ACP countries, beginning with the Yaoundé Convention in 1963, incentivized the preservation of these functional specializations in a manner that effectively rendered the development trajectories of most of the territories reliant on exogenous actors. It can hardly be surprising, therefore, that trade relations between Africa and Europe are characterized by asymmetry; of the seven colonial powers in Africa, six are members of the EU, and the United Kingdom only exited the Union at the end of 2020.

Dr. Agbo-Ejeh acknowledges the need for African countries to "break away from the catastrophic incompetence that has become ingrained in their domestic, continental and international relations" but stops short of articulating clearly how this can be done. In so doing, she leaves her thesis open to credible criticisms of pursuing logics of determinism or conspiracy by its failure to explore the counter-factual of African sovereign agency in the realm of trade and international economic laws. Two issues easily illustrate the implications of this omission.

One is the failure of economic inclusion in the post-colonial state-building project in Africa. Mahmood Mamdani shows convincingly that the logic of colonial occupation was to exclude African enterprises on pain of exile, prison, or death. Elvar Ingimundarson's study of the Royal Nigeria Company in West Africa further illustrates how this criminalized African enterprise and commercial agency as impermissible competition to Europeans. Far from being reversed, this criminalization of popular African enterprise was intensified in the post-colonial period, rendering it mostly informal and dangerous. The United Nations Economic Commission for Africa estimates informal cross-border trade (ICBT) in Africa to be "between 30 and 72 per cent of formal trade between neighboring countries." It is difficult to see how this astonishing statistic can possibly be blamed on the "power asymmetry" between Europe and Africa. Rather, it reflects a failure of the post-colonial African State to address the legacies of colonial exclusions.

Secondly, the suggestion that power asymmetry is exclusively exogenous fails to reckon with the asymmetries that define most of Africa's regional integration mechanisms themselves. The East African Community, for instance, was historically dominated by Kenya, which, Osita Eze reminds us, had "the most developed infrastructure" and "benefitted more than any other member from economic integration." Nigeria is in a similar position in ECOWAS, as is South Africa in the Southern African Development Community (SADC). These endogenous asymmetries have the potential to either distort regional integration initiatives in Africa or imbue them with instability and suspicions in the absence of effective, transparent and equitable compensation mechanisms, especially for land-locked states. The ongoing fragmentation of ECOWAS, until recently regarded as perhaps Africa's most effective regional integration experiment, is a formidable object lesson here.

Inebu Agbo-Ejeh's Power Asymmetry is a necessary offering in the year of the 140th anniversary of the Berlin Conference. It's a reminder that the lingering legacies of that history is both timely and eloquent. The General Act of the Berlin Conference, as the concluding treaty of the conference is known, is perhaps the constitutive instrument in this narrative of power asymmetry. However, no story of occupation and domination is complete without a narrative of resistance. The parsimony of the study towards the rich body of African literature on regional integration may have contributed to this omission. The reach, scope and resilience of informal trade in post-colonial Africa offer a formidable counterpoise to a single narrative of deterministic power asymmetry. The constraints of contemporary international trade regimes and economic laws are well discussed. The lesson in this book is the need for greater attention to the forms of resistance and fates of adaptation in Africa in the face of that asymmetry.

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