Yash P. Ghai, Reflections on Law and Economic Integration in East Africa. Uppsala: Scandinavian Institute of African Studies, 1976. Research Report No. 36. 47 pp.

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In this brief booklet, Yash Ghai provides a thought-provoking and useful examination of some of the weaknesses of the legal structure of the East African Community, as set forth in the Treaty of 1967. Analysis of these difficulties is especially valuable in view of the widely-recognized role of economic integration in permitting developing nations to take advantage of economies of scale, especially to build large-scale, modern industry. The newly established Economic Community of West African States (ECOWAS) is built around similar assumptions. 1

In East Africa, with a population of over 30 million and a land area the size of Europe, it has long been argued that economic integration could lay the foundation for balanced self-reliant regional growth capable of providing productive employment opportunities and rapidly raising the levels of living of all the region's inhabitants. At the time of independence, a fairly high degree of coordinated community services and a common market already existed. Yet today, for all intents and purposes, the East African Community, of which so many, academics and politicians alike, expected so much, is no longer functioning. Writing before its final collapse, Ghai provides some very useful insights as to why.

Ghai correctly emphasizes that economic integration cannot succeed unless the participating nations have a common political-economic system. He points out that the legal arrangements and institutions established by the Treaty, designed primarily to halt further disintegration of the then-existing level of cooperation, in some respects actually hastened its demise. He suggests, for example, that the decentralization of the corporations providing services, like railways, the post and communications system, etc., actually tended to disrupt their unified operations, reducing potential economies of scale. The fact that supreme authority rested with the presidents of the participating nations rendered the decision-making structure of the Community unwieldy and incapable of dealing with even the day-to-day issues of running the Community services. The weakness of the secretariat, its inability even to gather information on critical issues on its own, thwarted creative initiatives. The court's interpretation that state laws override community laws in the case of conflict further undermined the Community's ability to introduce an effective dynamic towards greater cooperation.

One must agree with Ghai that "law can do little if the partner states are not seriously committed to co-operation." He is justified in asserting that "It is not possible to make any recommendations for the revision of the Treaty or to suggest new legal arrangements until one has some sense of the political and economic decisions on the revision." (p. 42) It is undoubtedly true, as he says, that cooperation among East African states "is scarcely possible along the lines of free trade" as assumed in the Treaty. (Id.) He argues this is because of the degree of state intervention which exists in all three countries, despite their differing ideologies and policies. He suggests, in fact, that it may be precisely on the existence of public enterprise that the basis of cooperation must be structured.

Given these assertions, it seems unrealistic and in fact contradictory to suggest, as Ghai proceeds to do, that it is possible, despite the ideological and institutional differences between the participating states, to clarify the status of the Treaty: to make its terms binding on national courts; to establish enforcement mechanisms; to reach agreements on a regional industrial allocation pattern; and to provide incentives to attract transnational corporate investors. This contradiction suggests the necessity of deepening the underlying analysis of the causes of the institutionalized structural and political-economic difficulties hampering integration in the region.

It should be emphasized that the existing levels of integration in East Africa were developed in a colonial settler-capitalist context. This led to the development of parts of Kenya at the expense of underdevelopment throughout most of Tanzania and Uganda. Continued 'free trade' -- as posited by the 1967 Treaty[2] - must inevitably attract transnational corporations to invest in the most developed areas, primarily Nairobi and Mombasa. This would foster further externally dependent uneven development at the expense of the rest of the regional population. In economic crises of the kind which today engulf the western world, the impact will inevitably fall most heavily on the least developed areas and the poorest sections of the regional population. It has, in part, been the participating nations' struggles to escape this impact that has led to the community's current impassse.

The fundamental differences in the political-economic systems of the three East African countries, however, will not -- even if they abandon the myth of free trade -- enable them to achieve effective economic integration involving joint allocation of industry and attainment of a regionally balanced, self-reliant, integrated economic system. The critical issue is not that state intervention exists in all three countries; even in the most "capitalistic" "free enterprise" economy, the state intervenes extensively, utilizing laws to allocate powers to private actors who determine the nature of production and distribution of goods. Although the state exercises a significant degree of intervention in all three East African economies, the class nature and characteristics of that involvement are so different that it is illusory to propose that that might provide the basis for cooperation.

In Tanzania, the party and political leadership seek to create institutions to involve the working people and peasantry in implementing a transition to social ownership of the means of production. While this is not the place to attempt an assessment of their success, it is clear that their perspective is very different from that of Kenya. There, the elite, perhaps more accurately described as an emergent domestic bureaucratic bourgeoisie, seeks to utilize state machinery to advance itself in the context of continuing ties with and dependence on transnational corporations. In Uganda, the arbitrary use of state power to benefit favored elements of the military and bureaucracy has not only disrupted the previous externally dependent structure of experts, but has also further impoverished the masses of the population. Surely there is nothing in this picture to encourage hope that expressions of commitment to cooperation could lead to integration designed to provide productive employment opportunities and raise the living standards of the majority of the region's inhabitants!

More than that: There is a real danger that attempts to strengthen the power of the Community institutions, despite underlying difference, could have the consequence of strengthening the economically most powerful state capitalist regime, perhaps in collaboration with transnational corporate interests seeking to further exploit the regional populations and their resources.

The issue then, as Ghai himself points out, is not one of law per se. Rather it is one of the kinds of class relationships and joint political-economic institutions which need to be established to overcome uneven externally dependent development to achieve a balanced, integrated economy built around the creation of large scale modern industries directed to meeting the needs of all the citizens of the participating countries. There is not space here to consider these in detail. It is clear, however, that not only is the assumption of the efficacy of a free market inadequate. So are those institutions which perpetuate externally-dependent state capitalist regimes dominated by self-seeking elites. (The situation would not be improved -- it might even be worsened -- if they agreed upon incentives to attract foreign firms.) For effective integration to take place, directed to the needs of the masses of regional inhabitants, it is necessary for participating governments, representing the interests of the majority of their populations, to create joint institutions to achieve control of the "commanding heights" of the regional economy: not only basic industry, but also export-import and internal wholesale trade, and banking and financial institutions. Only on this basis can they formulate physical plans for restructuring the regional economy, allocating new industries and developing backward and forward linkages for the benefit of all participants. Only then can they formulate and implement parallel income policies and financial plans to capture the investible surpluses created in the region (much of them still shipped abroad in the form of profits, interest, high salaries and over-invoicing of imports by transnational firms) to ensure that essential desired industries and agricultural projects are established. In this context, they can determine whether and in what specific industries they wish to permit transnational corporations to invest without endangering long-range self-reliant regional growth perspectives.

In short, Ghai has provided a useful analysis of the shortcomings of the legal framework of the East African Community. He has correctly pointed out the fallacy of the assumption of free trade in the 1967 Treaty, as well as identifying specific flaws in the legal arrangements. His failure to probe more deeply into the class nature and conflicting characteristics of the governments of the participating states apparently leads him to suggest that there remains among them a sufficient degree of common purpose to enable them, once they cast aside the free trade assumptions, to agree to institute an effective dynamic towards more meaningful regional cooperation. The experience of the East African Community should, instead, be added to a growing list of failures which suggest that this is unduly—perhaps even dangerously—optimistic.

Footnotes

1. Ghai's analysis leads him to conclude—with much justification—that the Treaty establishing ECOWAS is "an incredibly optimistic and...unrealistic document." (p. 10.)

2. It should be underscored that 'free trade' has always been a myth in Africa, behind which the most powerful oligopolistic corporations have extracted raw materials and sold manufactured goods to maximize their profits at the expense of the majority of Africans.