

A DEEP DIVE ON PERTINENT ISSUES BENEATH SUPREMACY OF COMMUNITY LAW: SPECIAL REFERENCE TO THE EAST AFRICAN COMMUNITY

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DOI: doi.org/10.55662/IJLDAI.2022.8402

ABSTRACT

This paper seeks to address issues surrounding applicability of community/regional/supranational law at national level by East African partner states. By practice regional integration initiatives results into laws that bind partner states and individuals as well. It is these laws that regulate the relationship between the states, institutions and individuals in the regional block so created. In this regard legal issues do arise in the implementations of these laws. This paper will make a discussion on these issues, namely; the principles of sovereignty, supranationality and international legal personality, which must be outlined in the constitutive instruments of any regional community. These principles create the environment for proper implementation and application of community law in national courts if they are very well articulated in the community's constitutive instrument. It is these principles that gives validity to community law, and makes the law supreme, autonomous directly applicable and effective in national court of partner states.

INTRODUCTION

The world has undergone a lot of transformation since its creation so do states. Being recognized as juristic persons, states have always looked for ways to establish relations with one another. This interaction has stimulated a formation of rules and code of conducts that govern such relation for purpose of economic, political or social arrangements. To some state being under multilateral arrangement was not an ideal for them. As a result, there was a creation of community law. A legal order or legal system created by the court of justice in the land mark case of *Costa vs Enel*ⁱ whereas in 1964 the court held that European Economic Community (EEC) treaty did created its own legal system which has become integral part of the legal system of the Member States and that Community law takes precedence over national law.

To date Community law which is also referred to as regional or supranational lawⁱⁱ is an emerging legal phenomenon under international law, which has not been very well articulated by both the international community and scholars. Community law has its own characteristics and that the law of individual community has much common elements with law of other communities, there is more than the law of individual community it is basically unity within diversity. Community law do not operate in a vacuum but are part of one common context. It may either be universal, regional or even technical.ⁱⁱⁱ

Community law as a species of international law finds its relevance under International law. Communities are established by means of international treaties known as constitutive instruments, which finds their validity within the frameworks of International law.^{iv} The common rules for community law is treaty law^v, rules of responsibility of International Organisations, customary law, moreover, it shares its sources of law with sources of general international law, namely treaties, customary international law, general principles of law recognized by civilized states, judicial decisions and writings of highly qualified publicists.^{vi} Furthermore, Regional integration law operates within other spheres of International law namely; International trade, International investment and International finance.

A Community unlike a state does not have a constitution but has a founding treaty, which is a *grundnorm* or a constitution for this purpose. This treaty provides for sanctions to its subjects, the partner states for non-compliance.^{vii} With its laws, a community has a legal system, an attribute which it shares with states, this is important as it regulates its relationship with member states and other entities. This legal system has a law making and enforcement systems. Furthermore, a community's legal system must constitute the following key elements.

1. Rules for conduct which regulate the behaviour and activities within the legal system.
2. Defined entities to which the rules apply or relate these with subjects of the legal system; in this case it is the partner states.
3. A source from which one can identify the rules that form part of the legal system, these do not include International law and laws of other states. These are treated differently from the internal norms of the legal system.
4. Lastly, obligations to obey the norms of the legal system, here the subjects of the legal system must adhere to its rules.^{viii}

One needs to be cautious while treating a legal system of a Community/ International Organisation because the traditional concept of a legal system is always referred to as a legal system of a state. A legal system of a state looks different from a legal system of a community which is as a result of legal systems of several states coming together. A legal system of a community has more complicated issues, like who are its subjects and how it relates with them. So basically just like a state's legal system a community's legal system is also norm generating. It has institutions with powers granted by its constitutive treaty, which is its *grundnorm*, to make, interpret, and implement the law, it has subjects, who are its member states, institutions and individuals to whom its laws are directed.^{ix}

A Community's legal system or legal regime in this regard, must constitute the constitutive treaty, primary legislations enacted by the legislative body established by the constitutive treaty, subsidiary legislations made by persons or bodies authorised by the primary legislations, customs and principles.^x

COMMUNITY LAW AND ITS SOURCES

Community law is defined as a body of treaties and legislations made by competent community institutions, which have a binding effect on the laws of the community's partner states.^{xi} Regional Integration process itself is a creation of law. On the other hand, this process usually germinates from the political interactions and negotiations between states, where legal instruments, i.e. the law, outlines such processes and give a clear picture of a community so created.^{xii}

A Community is based on a legal order established by the treaty establishing it supplemented by community secondary legislations which include directives, regulations and decisions.^{xiii} In other words these entail sources of regional integration law. It is therefore not limited to the aforementioned sources but also includes applied laws i.e general International Law, International trade law, International investment law and International finance law, it also includes developed law and law of the member states.^{xiv}

Law enacted and Law developed by the Community

Law enacted and Law developed by the community is discussed together by this paper as the two interact and depend on the same sources of law. It is an accepted fact that Communities contribute a lot to the making and development of International law, notably through their capacity to express collectively the practice of its member states. However this varies from one community to the other depending on their competence and membership.^{xv}

Apparently, each of the community, including regional ones, has its own governing law, derived from its constituent instrument, as well as from the decisions and resolutions it adopts, together with its established practice. Each organization may therefore be considered to be an independent system.^{xvi} Thus, the internal law of an organization is comprised of three components, namely: the constituent instrument; the relevant decisions and the resolutions of the organization; and the established practice of the organization. The three components come into existence by the roles played by the community, which are internal law making, forums for state practice, perspective resolutions, expert opinions, decisions of organs, the practice of political organs and external practice of organisations.^{xvii}

This paper gives importance to the role of internal law making. This begins with the founding/constitutive treaty, which is regulated by Vienna convention on the law of treaties.^{xviii} When states have a common interest, they are free to agree, through an agreement, a treaty or a convention and create an organisation or a community thereafter. The legalization of this agreement creates an obligation to its member states.^{xix} The obligation is referred to as *pacta sunt servanda doctrine*, ultimately the treaty becomes law of the organisation. Furthermore, organisations also have powers to make law through their established legislative organs, to regulate relations between it and its members and other communities.

Through a forum of state practice, which has a taste of an element Customary International Law, which is the oldest of all sources of International Law, whether written or not. With community, statements made, or legal questions by governments, through their representatives, in organs and committees of organs is an evidence for customary law. This can be achieved also through voting on resolutions concerned with legal matters. A resolution itself is not binding but it prescribes principles of international law and implies a declaration. However, formulation of a principle may also articulate and formulate law.^{xx}

Community law also establish bodies of legal experts. Through them these organisations make law. Another opportunity to make law is through decisions of judicial organs. It is done by way of interpretations and implementation of the law. This is met through established judicial organs within the community, such as the EACJ,^{xxi} ACPHR,^{xxii} and The EUCJ.^{xxiii} Though, their specialized functions limits this purpose.^{xxiv}

Communities also make laws through their political organs. Like the summit of the EAC. This is achieved through recommendations and decisions relating to specific issues. Law is also made by way of external practice, where organisations may make agreements with members and non-member states and with other organisations. They may also make official pronouncements on issues affecting them, or may present international claims. This may affect the discourse of the law and in so doing law is made or developed.^{xxv}

Underpinnings of the EAC Law

Any regional integration initiative has the traditional sources of law under Public International Law.^{xxvi} These Sources are divided into two, namely the primary Sources and secondary

sources. The Primary source of EAC law is made up of Treaty establishing the community and Protocols. While the secondary source is made up of laws enacted by the EALA and laws made by community. However, there is a third source, namely general principles that is made up of fundamental and operational principles of the community.^{xxvii}

Primary Sources

The treaty is the main source of Community law. The treaty establishing the EAC was concluded by Partner states to enhance their corporation in agreed areas.^{xxviii} Protocols become an integral part of the treaty upon signature, and ratification by the Partner States. Each Protocol outlines its objectives, scope and institutional framework for its integration.^{xxix} To date, the EAC has concluded a number of protocol, namely the Sustainable Development of Lake Victoria Basin Protocol,^{xxx} the Customs Union Protocol,^{xxxi} The Common Market Protocol,^{xxxii} the EAC Monetary Union Protocol^{xxxiii} and the Protocol on the Establishment of the EAC political federation which is still in a draft mode.^{xxxiv}

As a general rule, the treaty demands that, partner after signing the treaty, they must enact a law to afford it effective implementation so as to give the treaty a binding nature.^{xxxv} This means the community's treaty and protocols must be domesticated for them to have a binding nature to Partner States.

Secondary Sources

Being part of source of community law it comprise of legislation, regulations, directives, decisions, recommendations, opinions and general principles. For example the EAC treaty states that, decisions of the EACJ, Community Organs, Institutions and laws takes precedence over similar national ones on similar matters pertaining to the implementation of the treaty.^{xxxvi} They have are have autonomy over national ones, they do not need a national parliament to enact a law to make it binding in national courts. They have a direct effect; an individual can rely on the provisions of community law in national courts.

a) Legislations

The EALA^{xxxvii} is the law making organ of the EAC community. The Laws are initiated by the council or the EALA itself, where a member by leave of the house may bring a private bill.

The drafting of the bill is done by the technical officers through consultation with relevant sectorial council. Then the bill is taken to the relevant committee for scrutiny, then to citizens for improvements through public hearing and in case there are proposed amendments, the committee reports to the house. Then the bill is adopted and passed with amendments if any, then taken to the heads of states for assent.^{xxxviii}

b) Regulations, Directives, Decisions, Recommendations and Opinions

It is articulated in the treaty that establishes the EAC, that Regulations, Directives, Decisions, Recommendations and Opinions of the council, given in accordance to the treaty is binding to all Partner States, Organs and Institutions of the community other than the Summit.^{xxxix} Similarly, are the decisions of the EACJ.^{xl} This is despite the fact that the community operates within the planes of International Law, where court decisions have a persuasive nature and binds only parties to it. The position is borrowed from the traditions of common law.^{xli}

c) General Principles

In the EAC the general principles underlying the community are articulated in the treaty.^{xlii} Not only that the treaty further makes a distinction between fundamental principles and operational principles. The fundamental principles^{xliii} govern the achievements of the community's objectives while the operational principles^{xliv} are there to govern the practical means of achievement of the objectives of the EAC. Therefore both have one ultimate aim, to attain the EAC's objectives by Partner States and not otherwise.

Applied law in the context of Community Law

Applied laws in this respect include, general International law, International trade law, International organisations law, International finance and International investment law. As it is in line with these spheres and branches of law that community law comes into existence.

General International law is a body of laws made up of rules and principles governing the dealings between nations. Recently the scope of International law has been extended to include relationships between states and individuals and the relationship between International organisations.^{xlv} International law has no defined area or governing body, but instead refers to many and varied laws, rules and customs which govern the impact and interactions between nations, their governments, organisations and businesses in relation to their rights and obligations.^{xlvi}

International law is made in a decentralized way; it's not about what states say but what states do. International law has no Constitution and Parliament but has an organ, the International Court of Justice (ICJ), however its decisions are not binding. Article 38 of ICJ statute provides for sources of International law namely; Treaties, Customary International law, general principles of law recognised by civilized states, judicial decisions and writings of highly qualified publicists.^{xlvii}

Regional economic integration operates within the context of International law. Regional integration law finds its validity in International law. It is evident that Public International law has been used in most cases to resolve disputes in international economic law. The use of International law has been contentious before the WTO^{xlviii} panels and appellate bodies.^{xlix} Despite this fact, regional integration law does not make direct reference to International law. The EAC treaty for instance, makes only one reference to International law, where it provides that, the Partner States resolve to adhere to the principles of International law governing relationship between sovereign states.^l International law was also referred to in the case of **East African Law Society v. AG of Kenya**^{li} where both the respondent and the applicant relied on International law, and so did the court in its judgement.^{lii} In the case reference was made to the court challenging the process of amendments to the treaty without following appropriate procedures. So the court was invited to investigate the matter and establish whether the amendments were done in good faith and whether this would strengthen the community.^{liii}

Treaty Law

The most applicable aspect of International law is treaty making, be it International Organisations law, International economic law, International investment law or International trade law. A treaty is an international agreement, embodied in a single formal instrument made between entities, both or all of which are subjects of International law and possesses an International legal personality, a capacity to make a treaty and with intention to create rights and obligations or to establish relationship governed by International law.^{liv} These treaties might take the form of Bilateral Treaties or Multilateral treaties.

Bilateral treaties are agreements between two states or parties, normally concluded by states desiring to promote or regulate interests or matters of particular interests to them alone. Extradition treaties are a good example of this form of treaty. Multilateral treaties on the other hand, are agreements concluded between more than two parties. It is stated that some of these agreements do not create new rules of International law but merely serve as expanded versions of bilateral agreements. Examples of these treaties are the WTO, OAS^{lv} and EAC. There are some multilateral treaties that have an effect of establishing new principle of international law, they are referred to as law making treaties example the ICCPR^{lvi}, the CRC^{lvii} and CEDAW.^{lviii}

International Economic Law

Looking at International economic law, this entails rules and regulations on cross border transactions in goods, services and capital. It also includes monetary relations and international protection of intellectual, international competition as well as the movement of companies and natural persons.^{lix} In so to speak, International economic law is made up of Public International law which consists of world trade law, International investment, International monetary law, the law of regional economic integration and other bi-lateral or multilateral trade agreements.^{lx}

a) International Trade Law

Regional integration has never gone away ever since WTO General Arrangement on Trade and Tariff (GATT) first started operating. The makers of this agreement created an open space where Regional Trade Agreements (RTAs) could blossom and enter into competition with the multilateral systems. This open space was later enlarged through the development of primary and secondary regional integration law, offering particularly advantageous conditions for RTAs, including developing countries.^{lxi}

International trade differs from domestic sales in a number of ways, they generally involve long distance, during which the goods are in custody of the carrier, there are risks in transit as the goods may pass through a number of different jurisdictions, the payment and delivery of goods are also complicated. All these matters are regulated and dealt with. UNCTAD^{lxii} outlines most important tools used in international trade, which are; allocation of rights and responsibilities of importers and exporters, regarding payment and delivery of goods, securing payment by the buyer of the merchandise and protection of the buyer against non performance of the contractual obligation.

It is agreed that at the heart of any regional integration lies the aim of achieving economic and trade corporation. In this regard regional economic integration may take the following forms, Preferential Trade Areas, Free Trade Areas, Custom Unions, Common Market and Currency Union. All these forms were at the heart of the makers of the WTO/GATT law. In other words provisions of GATT outlaw these forms as they are. They should be in line with WTO/GATT law.^{lxiii}

In order to strengthen regional integration, Partner States of any regional integration community need to be an integral part of the global economy. More importantly they need to ensure that their regional integration arrangements are in conformity with WTO's requirements under GATT.^{lxiv}

b) International Investment law

This part of international law basically regulates issues related to foreign direct investment (FDIs). FDIs entail the following key elements; direct investment, creation of companies, mergers and acquisitions, industrial alliances and financing. It entails cross border investment which is a threat to national sovereignty. In the beginning these matters were regulated by national laws. With trade liberalization, FDI became important and there was a need to have a structured multilateral framework on FDI. It all began with the Havana charter of 1948, the charter attempted to formulate international principles concerning FDIs. It mainly dealt with International trade, and issues of investment and competition.^{lxv} This was followed by the OECD^{lxvi} draft convention on the protection of foreign property of 1967 which was later followed by many other international agreements on FDIs. All these are sources of regional integration law, and most of them protect access to foreign markets and freedom of trade.^{lxvii}

Modern investment law is dominated by treaties, where states are free to decide whether or not to permit foreign investment. The freedom to exclude any form of foreign investment implies that, states may set their own conditions for admissions of foreign investment. Therefore, the main aspects regulated by International investment law are entry/ admission of foreign investment, treatment after entry and matters of dispute settlement. Once admitted a foreign investment enjoys some protection under customary international standards, especially in expropriation. Under International law, any obligation of the hosting state, regarding admission, national treatment or most favoured treatment are derived from the treaty. The most important treatment among the customary rules, are the International Minimum standard which ensures treatment of foreign persons in terms of decency and protection. i.e fair and equitable treatment and full protection and security.^{lxviii}

Dispute settlement is based on a dispute settlement clause in the investment treaty. This describes the manner through which a dispute if it ever arose will be settled. For the purposes of International investment law, this clause is referred to as ICSID^{lxix} clause^{lxx}, ICSID is the main forum for settlement of investment between foreign investors and hosting states. However membership to the convention is mandatory for ICSID to entertain a dispute.

b) International Organisation Law

Lastly on the law of international organisations, it is important to note that, an international institution is also called an ‘international organization’ or a ‘public international union’. However, it is proper to consider that, a regional organization should rather be called an international organization of limited competence. International organisations are the most relevant actors in today’s International law. They play a very vital role of creating legally binding rules for their member states.^{lxxi}

The founding/ constitutive agreements usually provide for the establishment of international organisation, for determination of legal personality of International Organisations both under national and International law, articulating functions and powers of the organisation, determining privileges and immunities and issues of succession.

Establishment of regional organisations is usually through a formal instrument in form of an agreement between governments of nations, which may be referred to as a treaty or an agreement or a convention.^{lxxii} This is regulated by the Vienna convention on the law of treaties of 1969. Treaties are formed when lawful representatives of the governments of the states go through a ratification process that will eventually provide an organisation with International legal personality.^{lxxiii} These instruments usually provide for the basic things which include; declaration of establishment, goals and objectives of the organisation, areas of cooperation, some basic principles, the membership and the organizational structure.

Legal personality can be possessed by an entity if it is capable of possessing international rights and duties and has the capacity to maintain its right by bringing international claim.^{lxxiv} As pointed out earlier, constitutive treaties usually provide for legal personality both under national and International law, for organisations they have so established. In this regard, legal personality can either be domestic/national or international legal personality. Domestic legal personality should not be confused with international legal personality, as it entails a personality effective in domestic legal system of a specific state.^{lxxv} In most legal systems the legal personality of an entity is determined by personal law. For the purposes of regional and international organisations, their personal law is International law. Therefore recognition of domestic legal personality for international organisations will exist on the international plane.^{lxxvi}

Legal personality that international organisations possess makes them subjects of International law, and thus capable of enforcing rights and duties upon the international plane as distinct from operating merely within the confines of separate municipal jurisdictions.^{lxxvii} It also has an advantage of protecting member states of the organisation from liability for the community /organisation's obligation.^{lxxviii}

Functions and powers of international organisations are governed by the principle of speciality. Meaning, they are invested by the treaties which creates them with powers, the limits of which are a function of the common interests whose promotion those states entrust to them.^{lxxix} The rights and duties of International organisations are also provided for in the **Reparation case**,^{lxxx} where it was stated that they depend upon its purpose and functions as specified or implied in its constitutive documents.^{lxxxii} It should be noted that, specified conferred powers are those stated in the founding agreements, however, they extend to those that are necessary to perform functions of the organisation effectively. Implied powers are those that are derived from the objects and purpose of the organisation as stated in the founding agreement.^{lxxxii}

As far as functions are concerned, international organizations have legislative, executive and judicial or quasi-judicial powers. Legislative powers are exercised by organizations through their legislative organs or through their Institutional Acts. The executive or administrative powers entail the capacity endowed to an organization, to enable it perform and implement its functions. It is the administrative organ or secretariat, which plays a central role in managing the organization and its activities. International Organisations also have the capacity to conclude treaties, however subject to rules of that organisation.^{lxxxiii} The European Union for instance, under article 37^{lxxxiv} states that the union may conclude agreements with one or more states or international organisation.

The law of international organisations also confers privileges and immunities to these organisations. These privileges and immunities are necessary for the fulfilment of the purposes or functions of these organisations. Privileges are exemptions from the otherwise applicable substantive law of the state, while immunities are exemptions from administrative, adjudicatory or executive powers of a state.^{lxxxv}

Apart from the constitutive instruments providing for privileges and immunities, some separate multilateral privileges and immunities agreements also provide for more detailed rules for

privileges and immunities for international organisations. Typical privileges are an exemption from some areas of national law, such as tax law, foreign exchange controls, customs and immigration rule. The most important ones are exemption from obligation to pay any direct tax for the organisation itself and for its employee. Immunities comprise of a number of exemptions from the power of a state, the most important ones are the exemptions from legal processes, jurisdictional immunity and immunity from execution or enforcement measures.^{lxxxvi}

In matters of succession of international organisation may arise in cases of constitutional changes, integration, separation or dissolution. In practice it is only in the event of dissolution that arises the question of succession.^{lxxxvii} Again this is covered by the constitutive treaty, for instance the EAC treaty provides that, the organization shall have a capacity of a body corporate, with perpetual succession.^{lxxxviii} Which literary means, a pattern which determines the continuation of any form, regardless of the death of the owner, as it will have no effect on the firm's operation.^{lxxxix} In other words members of the EAC may come and go but the community will continue to exist.

Law of Member States

An international or regional organisation is usually a product of states. These states have legal systems made up of the Constitution, principle legislations, subsidiary legislations, rules and regulations. Being part of a community does not take away powers of these member states on their law and making more laws to regulate relations. Laws of member states outline or give a road map to regional law. In so to speak law enacted by international organisations in most cases takes precedence over similar national laws on matters pertaining to the community.

This is envisaged under article 38 of the International Court of Justice statute, which points out general principles of law as the third source of International law. The general principles of law recognised by civilized nations are certain beliefs and practices that are common to all developed legal systems.^{xc}For instance, the EAC, developed its competition law guided by provisions of the competition law of Tanzania a member state. This serves the purpose of harmonising regional law and national law. It is important for both laws to have the same tone, since they serve the same subjects.

Another example where national law was referred as a source of regional law is in the case of **stauder v. City of ulm**^{xci} where the court of Justice of European communities declared that it considered itself inspired and bound by principles and rules common to the legal systems of its member states.^{xcii}

A DEEP DIVE ON THE APPLICABILITY OF COMMUNITY LAW AT NATIONAL LEVEL; PERTINENT ISSUES

Regional integration is faced by a challenge of making regional law applicable, legally binding and enforceable within the national level of partner states. Regional constitutive treaties have provisions with an aim of defining the relationship between community law and national law, and to make community law effective in national legal systems. In absence of these provisions one has to look for answers in national Constitution and jurisprudence. However even with existence of these provisions, there is still a need to look at the national Constitution and jurisprudence to find out whether community law can be accommodated by the national legal system. Since states are sovereign.^{xciii}

In so to speak, there are two main schools of thought with regard to applicability of regional law at the national level, the Monism school of thought and the Dualism School of thought. With monism there is an automatic incorporation of treaty or international agreements while with dualism treaties have no direct or automatic validity in domestic law, unless ratified first, although they might be relevant to the interpretation of statutes or the development of the law. Under the “Dualist” system, treaty provisions must be either incorporated or transformed into the domestic legal system and applied as national law. The EAC treaty^{xciv} imposes obligation on the Partner States to domesticate it. What is challenging however is that Rwanda, Burundi and Kenya are monists while Uganda and Tanzania are dualists. These schools further give two principles on applicability of regional law at national level, namely direct applicability principle and direct effect principle.

Direct Effect principle is given to a provision of community law is applied by the national court as part of the law of the land. It is not necessary in this case for further legislative steps referring to it. The first court decision on direct effect was in the case of **Van Gend en Leos**^{xcv}

by the European Court. In this case, a private firm sought to invoke community law against the Dutch custom union in proceedings in a Dutch tribunal. The tribunal made reference to the European court. Where the main issue before the court was whether article 12^{xcvi} of the European Community treaty was directly effective at that time. The provision was addressed to member states; it imposed an obligation on them but did not expressly grant any corresponding rights to individuals to import goods free from any duty imposed after the establishment of the EC, nor did it state that any such duty would be invalid. Therefore, it was easy thinking that it was directly effective. It was held that, a provision is not prevented from being directly effective merely because it is addressed to member states and does not expressly confer rights on private individuals.^{xcvii}

Direct Applicability Principle is articulated by the European Court of Justice (ECJ) in the case of **Amsterdam Bulb v. Produktschap Voor siergewassen**^{xcviii} which defines direct applicability as the entry into force of community law being independent of any measure of reception into national law. The Principle allows community law to become part of national law without any further legislative measures to transform it into national law. In this regard, these further legislative measures include an Act of Parliament, a parliamentary resolution, an executive act like cabinet approval. In most common law countries, an Act of parliament is required before any International law becomes part of national law. Mere ratification by the Parliament is not enough. This principle is not provided for in any African regional treaties, however there are some provisions that imply direct applicability.^{xcix}

Pertinent Issues

Part of this paper discusses issues that describe the relationship between Regional Integration law and law of member states. These are basically legal issues of regional integration, which are challenges that regional integration law is facing, regarding applicability of regional law at national level, namely; sovereignty which means the supreme authority of a state and supranationality which literally means extending beyond or transcending established borders or spheres of influence held by separate nations. .

The Concept of Supranationality

Regional integration processes usually create an institution or organisation with a personality of its own and whose existence is beyond the national state and distinct from the states which created it. Exploring the concept of integration is exploring the approach of supranationality as agreed by the member states.^c Supranationality is significant in regional integration because it surrounds the concept of integration; it answers the question of the nature and type of integration. Supranationality can only work and function properly if there is interdependency and support between supra- national and member states' organs and institutions.^{ci}

Supranationality can also be looked at as a joint effort of sovereignty, as it was in the European Union; the move towards deeper integration was engineered by the Maastricht Treaty that brought about greater pooling of sovereignty and transfer of competence to regional institutions.^{cii}

In the case of *Flamino Costa v. Enel*^{ciii} it was argued that, limitation of sovereignty or transfer of powers from states to the Community had taken place however, member states retained the central role in decision making and in interaction with the Community and its Parliament. Any Regional Integration has its approaches to supranationality. The notable approaches are Rationalist, Revolutionary and Realism. Rationalist is viewed as the transformation of the world society from smaller to bigger ones, from simple orders to more sophisticated order. In this regard new entities are created to replace the national authorities and its powers are transferred too, and are expected to perform as active world performers. It is also known as the transfer of powers theory. With revolutionary, it is the creation of supranational bodies for specific aims and not for transformation. It is viewed as the transfer of some sovereign powers to a supranational institution but not a total replacement of sovereignty of a state. It is also known as delegation of powers theory. And realism is viewed as a struggle for power and supremacy. Supranational institutions are created to serve a balance of these powers. It carries elements of both the rationalist and revolutionary approaches, and it is known as agency relationship theory.^{civ}

Basically supranationality approaches in any regional integration can be determined through constitutive instruments of the integration, practice of the organisation and the organs and practice of its member states. Powers created by an organisation can be determined by looking

at the practices of member states towards an organisation/community and its organs. The question here is whether or not partner states consider the organisation supranational.^{cv}

Supranationality can either be expressly or impliedly stipulated in the constitutive instruments. In practice, most regional integration initiatives in the world have not expressly provided for supranationality approaches in their constitutive instruments.^{cvi}The Treaty Establishing the EAC has a provision on the supranationality of organs, institutions and law of the community.^{cvii}

Supranationality is basically a political legal concept with the following elements, decisional autonomy, the binding effect of the law of the Community, the institutional autonomy of the Community as opposed to its Partner States. Also, an element of direct binding effect of the Community law on natural and legal persons in the Partner States. This implies the existence of an organisation capable of exercising its authoritative powers over its member states.^{cviii}The legal personality of an institution determines whether it is a supranational institution or not and the approach it has adopted towards supranationality, all these as pointed out already are provided for in the constitutive treaty of the organisation.

ISSUES SURROUNDING SUPRANATIONALITY IN THE EAST AFRICAN COMMUNITY

The EAC on the general undertakings in regard to implementation of the Community organs, institutions and laws, by the wordings of Article 8(4) of the EAC Treaty states that; Community organs, institutions and laws takes precedence over similar national ones and that Partner States shall take necessary steps to put in place legal instruments to confer precedence of Community organs, institutions and laws over similar national ones.^{cix}This implies that Community law and its institutions and organs are supreme, in other words are autonomous, another element of supranationality that is questioned in the EAC.

Creating and strengthening supranational structures is one of the challenges the EAC is facing. Corporation within the community has been intergovernmental which hinders implementation of agreed decisions.^{cx} The community has failed to recognize the fact that, by being part of a common project which is supranational means a loss of sovereignty and being bound against one's own will.^{cx}

The EACJ still needs to provide clarifications since partner states have understood the concept differently. In the decision in Prof. Anyang' Nyong'o's case, the EACJ restated the principle of supremacy within the EAC by interfering with national interests and sovereignty on matters of national policy over the lack of jurisdiction by the respondent.^{cxii} it was observed that;

“When the partner states entered into the Treaty, they embarked on the proverbial journal of thousand miles which of necessity starts with the first step. To reach the desired destination they have to ensure that every subsequent step is directed towards that destination and not backward or away. They are bound to be hurdle in balancing individual state's sovereignty with integration, while the treaty upholds the principle of sovereign equality. It must be acknowledged that by the very nature of the objective they must set out to achieve, each partner state is expected to cede some amount of sovereignty to the Community and its organs in limited areas to enable them play their role.”^{cxiii}

As reaction of the court on this matter, the treaty establishing the EAC was amended. The amendments had an effect of limiting jurisdiction and access to the EACJ against that of Partner States. The amendments were challenged by the East African Law Society (EALS), where again the EACJ restated its jurisdiction over the EAC Treaty amendment process. By amending the Treaty and expressly conferring jurisdiction on national bodies over interpretation of the treaty, the Partner States were able to evade the EACJ by limiting its jurisdiction and to empower national courts to rule on EAC law as well.^{cxiv} As a result there will be no final instance ruling to be applied to all Partner States and there is a possibility of having different interpretations of the same provisions of the EAC Treaty leading to legal uncertainty and different levels of legal protection.

The uncertainties and different understanding and comprehension of supremacy and jurisdiction of Community law and its institutions and organs by Partner States is a hindrance to supranationality and to regional integration process in the EAC. However, the decision of Prof. Anyang' Nyong'o's case above there are indications of a future recognition of direct effect in the EAC. In the above case, the EACJ drew inspirations from a European court of Justice's case, to make clarifications where there is a conflict between community law and national law: the former is given primacy in order to be applied uniformly and effective in the Community.^{cxv}

Sovereignty vis -a -vis Community law

It is argued that, at the center of all these challenges, lies the principle of Sovereignty. The term sovereignty is literally defined as the supreme, absolute and uncontrollable power by which an independent state is governed and from which all specific political powers are derived. It also means the intentional independence of a state, combined with the right and power of regulating its internal affairs without foreign interference.^{cxvi} The term is also used as a synonym for the term independence,^{cxvii} As per the Montevideo Convention, independence is represented by the requirement of capacity to enter into relations.^{cxviii}

The term also means supreme authority within a territory, as much regional integration naturally requires that participants hand over some part of their sovereignty for the sake of cooperation. A fully developed integration implies concrete though partial transfer of national sovereignty to the regional community, especially with regard to control over foreign policy. Moreover, trade shifts from national sovereigns to regional authorities.^{cxix}

Sovereignty is an aggregated concept that varies according to historical and social circumstances. It is made up of the following key elements, namely, autonomy, control and legitimacy. In this context autonomy means independence in policy making and action, control means the ability to produce an effect and legitimacy means the recognised right to make rules.^{cxx}

In the process of integration, a state surrenders some of its rights and powers to a supranational level in a process known as supranationality because this state is sovereign. It is, however, argued that sovereignty is a quality that can be attached only to a state.^{cxxi} Further sovereignty is the right of the state to use the highest authority within its territory. Such Sovereignty has two dimensions, the external and internal sovereignty. Internal sovereignty is the legitimate authority of the state and its institutions to use the highest authority within the territory of a state and external sovereignty is the right to judicial equality and territorial integrity in the international system which is based on recognition of internal sovereignty of the state by other states.^{cxxii}

Therefore, sovereignty is the supreme legal authority of the state to give and enforce the law within a certain territory. Consequently such state is independent from the authority of any other state and is equal to much other states under international law. With sovereignty, a state has the highest authority within its territory. No other actor has the right in decision making of

a state. In this regard a state has the authority to make decisions over consumer protection within its territory. However, it should be noted that, this is another challenge that regional integration is facing, states are sovereign, therefore there is a need for a higher authority, hence supranationality.^{cxxiii}

Sovereignty and Regional Integration create a dilemma for decision makers. If a nation intends to preserve full national sovereignty, such nation should forget about regional integration. And if a nation chooses to proceed with regional integration the nation has to renounce the most important levers of exclusive sovereignty over certain public policies. As it was in Western Europe during the processes of regional integration, its most important two countries Germany and France, chose to give up their sovereignty over two important factors of war, iron and coal.^{cxxiv}

CONCLUSION

It is proper to have these issues addressed by constitutive instruments of a community. If not, community law lacks its binding nature and its essence. More importantly objectives of a regional community can easily be achieved, if the partner states know their obligations so imposed by these laws, the powers and jurisdiction of community law *visa vis* national law. This do not disregard the fact that, states are sovereign, since sovereign they have decisions of their own and can do anything for the interest of its subject. By being in a regional integration arrangements some of these rights are shifted to the community for the interest of all partner states and their citizens at large.

As alluded above, applicability of community law at national level is a matter established and defined by the constitutive treaty of the community or alternatively within the constitutions of Partner states. The EAC gives supremacy to the community law over national law, this makes community law supranational. It is also noted that, community's approach to this matter is of dualistic nature as far as the treaty and protocols are concerned, while its laws made by the EALA have direct applicability and direct effect nature.^{cxxv}

The EAC law is directly applicable in national courts. It does not need a national parliament to enact a law to make it binding in national courts. It also have a direct effect sice an individual

can rely on provisions of EAC law in domestic courts. To embrace this, Partner States have the approximation approach by enacting a domestic law to align with EAC law for easier interpretation of this law at national level.^{cxxvi} Despite the position of the law, Partner States have delayed or made it difficult in implementing and applying community law at national level. Judge Ruhangisa states that in most cases, Partner States opts for protocols rather than EALA made laws to avoid their effects or they have delayed accomplishment of bills/laws made therefore, affecting its implementation and applicability.^{cxxvii}

Apparently, Partner States choose to embrace their sovereignty over obligations that rises out of state's commitment in the community. They also use delaying tactics for instance by the use of principles of the community with political motives, for instance a principle that allow flexibility and addresses the matter of inequality among partner states. In the sense that those ready to implement integration strategies because they have economic strength should proceed while those not ready will join later, hence creation sub- regional groups and delays in implementation of community's agenda just because the principles allows it.

ENDNOTES

ⁱ Costa vs Enel ,Case 6/64 (15 July 1964)

ⁱⁱ It should be noted that Regional integration is a process of establishing relations/linkages between states of same geographical area with the intention of attaining common aims; the outcome of this process is the establishment of regional organisations which becomes international organisations upon satisfaction of the criteria for international organisations. In that sense, international organisations are the outcome of regional integration; However, not every international organisation result from regional integration and the law that operate within them is referred to as either community law, regional integration law or international organisations law

ⁱⁱⁱ BLOKKER N, Law of International Organisations, Paper Presented in The United Nations Regional Courses in International Law for Africa, 2nd March 2018, Addis Ababa, Ethiopia

^{iv} SHAW, M.N (2017) International Law, Cambridge 8th Ed p.1000

^v The Vienna Convention on the law of Treaties of 1969 and the Vienna Convention on the law of Treaties between States and International Organisations or between International Organizations of 1986

^{vi} Article 33 (2) of the UN Charter

^{vii} MWITA, N.B (2017) Impact of EAC law on the Law of Partner States, A case Study of Consumer Protection Law with Specific Focus on Tanzania, PhD Thesis, St. Augustine University of Tanzania p.68

^{viii} OPPONG, R.F (2011) Legal Aspects of Economic Integration In Africa, Cambridge p. 37.

^{ix} Ibid.

^x KILANGI, A (2013) Development of the Law of Integration In Africa; Its Structure and Pertinent Features, United nations Audiovisual Library of International Law, Journal of the United Nations, No 2013/63 p 12.

^{xi} LADAN, M(2015) Legal Aspects of Regional Integration in West Africa and The Role of ECOWAS Court of Justice, Human Rights and Fundamental Values of ECOWAS; An Analysis of the Jurisprudence of the ECOWAS Court of Justice, A paper presented at the International Conference, Guinea Bisau, March 2012.

^{xii} FAGBABIYO, B (2012) Exploring Legal Imperatives of Regional Integration in Africa, Comparative and International Law Journal of South Africa, Vol 45 No. 1 March 2012, pp 64 – 76 at p. 65.

- xiii ATKINSON(1984) Legal foundations of the European Economic Integration, Journal of Economic issues, Vol. 18 No.2 June 1984 pp507 – 515 at p 509.
- xiv Ibid
- xv CRAWFORD, J (2012) Brownie's Principles of International law, 8th ed Oxford p.192.
- xvi See BLOKKER N, Law of International Organisations, Paper Presented in The United Nations Regional Courses in International Law for Africa, 2nd March 2018, Addis Ababa, Ethiopia. Is there Unity within Diversity? What happens when a new community is created and a constitutive treaty is created or when new institutional rules are needed? The lessons are that there is no blue print, thou shall not simply copy but why should a community reinvent the wheel?
- xvii CRAWFORD, J. Above
- xviii Article 26 of the convention.
- xix POSNER E.A etal (2005) The Limits Of International Law, Oxford.
- xx See CRAWFORD supra, it is evident within the UN for instance, a general resolution though not binding have some normative value. And when it touches a subject dealt within the UN Charter, it may be regarded authoritative. Example, the Declaration on the granting of independence to colonial countries and peoples GA Res 1514 (XV) 14/Dec/1960.
- xxi The East African Court of Justice
- xxii The African Court of People and Human Rights
- xxiii The European Union Court of Justice
- xxiv Ibid.
- xxv All rules and orders made by the summit under the treaty shall come into force on the date of publication in the official community gazzete. See Article 11(8) of The Treaty Establishing the EAC, See also the functions of the Summit
- xxvi BORCHARDT, K.D(2000) ABCs OF Community Law, European Commission, Belgium p.58.
- xxvii These principles are articulated in the Treaty Establishing the EAC under Articles 6 and 7. Some scholar include this source in the secondary sources of community law, but in parcitice they operate independently.
- xxviii RUHANGISA, J.E (2017) The Scope, Nature and Effect of EAC Law: East African Community Law, Institutional, Substantive and Comparative EU Aspects, Brill p. 141.
- xxix BINDA, E.M (2017) The Scope, Nature and Effect of EAC Law: East African Community Law, Institutional, Substantive and Comparative EU Aspects, Brill p. 109.
- xxx November 2003
- xxxi Of 2006
- xxxii Of 2010
- xxxiii Serious negotiations of the EAC Monetary Union commenced in January 2010, the EAC Protocol for Monetary Union was signed in the year 2013, and the monetary union itself will be established by 2024. - see East African Community, EAC Integration Information Guide, East African Community Secretariat.
- xxxiv BINDA, E. M Above
- xxxv Article 8(2) of the Treaty
- xxxvi Articles 8(4) and 33 (2) of the Treaty
- xxxvii East African Legislative Assembly
- xxxviii See Articles 59, 62 and 63 of the Treaty
- xxxix Article 16 of the Treaty
- xl The East African Court of Justice
- xli RUHANGISA Above
- xlii Articles 6 and 7 of the Treaty
- xliii These principles are; mutual trust, political will, peaceful coexistence, good neighbourliness, good governance. Observance of human rights, equitable distribution of benefits and cooperation for mutual benefits
- xliv These are; people- centered and market driven cooperation, the principle of subsidiarity, variable geometry principle, the principle of asymmetry, and complementarity principle.
- xlv http://www.law.cornell.edu/wex/international_law – Accessed on 25/11/2021.
- xlvi <https://www.hg.org.international-law.html> – Accessed on 25/11/2021
- xlvii United Nations Audiovisual Library of International law at legal.un.org/avl/ls/greenwood_il_video_2html – Accessed on 25/11/2020
- xlviii World Trade Organisation
- xliv OPPONG fn 8 p 157.
- ¹ Preamble of the EAC Treaty.
- ^{li} (2008) 1 East Afr. LR 95.

- ^{lii} United Nations Audiovisual Library of International law at legal.un.org/avl/ls/greenwood_il_video_2html – Accessed on 28/11/2021
- ^{liii} <http://eacj.org/?cases=east-africa-law-society-and-4-others-vs-attorney-general-of-kenya-and-3-others> – Accessed on 30/11/2021.
- ^{liv} Sir GERALD G, the Third rapportuer on the law of treaties for the UN International Law Commission quoted by, Von GLAHAN & TAULBEE (2012) law among Nations, An Introduction to Public International Law, 8th Ed, Pearson Longman p.270.
- ^{lv} Organisation of American States.
- ^{lvi} International Convention on Civil and Political Rights
- ^{lvii} Convention on the Right of the Child
- ^{lviii} Convention on the Elimination of All Forms of Discriminations Against Women – See. Von GLAHAN & TAULBEE(2012)law among Nations, An Introduction to Public International Law, 8th Ed, Pearson Longman p.271.
- ^{lix} HERDEGEN, M (2012) Principles of International Economic Law, 1st Ed Oxford University Press p.1
- ^{lx} Ibid at p. 7.
- ^{lxi} HILPOLD P, Regional Integration According to Article XXIV GATT- Between Law and Politics, retrieved from www.mpil.de/files/pdf3/mpunyb_hilpold_7pdf - Accessed on 24/11/2021.
- ^{lxii} United Nations Conference on Trade and Development
- ^{lxiii} Ibid.
- ^{lxiv} Supra FAGIBAYO fn 12.
- ^{lxv} LEAL-ARCUS, R (2010) International Trade and investment law; Multilateral, Regional and Bilateral Governance, Edward Edgar Publishing L.t.d at p 168
- ^{lxvi} Organisation for Economic Cooperation and Development
- ^{lxvii} PETERSMANN, E (2012)International Economic Law in the 21st Century ; Constitutional Pluralism and Multilevel Governance of Independent Public Goods, Hart Publishing p 372
- ^{lxviii} Von GLAHAN & TAULBEE (2012) law among Nations, An Introduction to Public International Law, 8th Ed, Pearson Longman p..359.
- ^{lxix} International Center for Settlement of Investment Disputes
- ^{lxx} Article 25(1) ICSID convention of 1965, ICSID is an abbreviation of nternational Center for Settlement of Investment Disputes.
- ^{lxxi} Supra Von GLAHAN & TAULBEE p 28.
- ^{lxxii} KOHONA, P.T. B (2003) International Organisations, United nations Treaty Collection, retrieved from <http://www.google.com/url?sa=t&source=web&rct=j&url=https://...> – Accessed on 27/10/2021.
- ^{lxxiii} Union of international Associations, How do international Organisations created, at <http://www.uia.org/faq/introgs6> - accessed on 27/11/2021.
- ^{lxxiv} The reparation case, Reparations for Injuries Suffered in the Service of the United Nations, Advisory opinion: ICJ Reports 1949, p. 179.
- ^{lxxv} REINSCH, A (ed)(2013)The privileges and Immunities of International Organisations in Domestic Courts, 1st ed Oxford p.5.
- ^{lxxvi} GUDBRANDSEN, S.J Legal Personality of International Organisations- Duo.
- ^{lxxvii} MENON, P.R The Legal Personality of International organisations at[http://heinonline.org/HOL/ Landing Page?handle=hein.journal/sljin14&div=8&id=&page=](http://heinonline.org/HOL/LandingPage?handle=hein.journal/sljin14&div=8&id=&page=) - Accessed on 27/11/2021.
- ^{lxxviii} Supra fn 18 p 28.
- ^{lxxix} Preliminary Objections; legality of the use of by a state of nuclear weapons in Armed conflict, Advisory opinion, ICJ 1986.
- ^{lxxx} Ibid
- ^{lxxxi} Law of International Organisations, International Organisations and the law of treaties Palacky University Olmouc, 2011.
- ^{lxxxii} Ibid.
- ^{lxxxiii} Article 6 of the Vienna convention on the law of treaties between states and international organizations or between international organizations.
- ^{lxxxiv} Treaty Establishing the European Union..
- ^{lxxxv} Supra fn 13 p.6.
- ^{lxxxvi} Ibid.
- ^{lxxxvii} Chiu, H (1965) Succession in International Organisations. International and Comparative law Quaterly, Vol. 14 No 1, jan 1965, pp 83-120 at p 91.
- ^{lxxxviii} Article 4 of the Treaty for the Establishment of the East African Community, 1999.
- ^{lxxxix} <http://thelawdictionary.org/perpetual-succession> - Accessed on 28/11/2021.

- ^{xc}<http://www.globalization101.org/what-are-the-sources-of-international-law/> - Accessed on 28/11/2021
- ^{xc}i (1969) E.C.R. 149, (1970) C.M.L.R 112
- ^{xc}ii WILNER, G. M, Reflection on Regional Human Rights retrieved from www.digitalcommons.law.uga.edu – Accessed on 28/11/2021
- ^{xc}iii OPPONG p189.
- ^{xc}iv Article 8(2) of the treaty.
- ^{xc}v 26/62 (1962) ECR 1.
- ^{xc}vi Of the year 1957, The Article states that; member states shall refrain from introducing, as between themselves any new customs duties on importation or exportation charges with equivalent effect and from increasing such duties or charges as they apply in their commercial relation with each other.
- ^{xc}vii HARTLEY, C.T (2007) *The Foundation of European Community Law*, 6th Ed , Oxford University Press. P. 192.
- ^{xc}viii (50/76) [1976] ECR 137at 146.
- ^{xc}ix Article 4(5) of the Treaty Establishing the EAC.
- ^c KILANGI, A, (2011)*The Jurisprudence of Regional Integration, Lessons Drawn from the Past Integration Initiatives in East Africa*, SAUT Law Journal, Vol. 1.
- ^{ci} ACOSTA, J (2013) *Regional Integration in South America; A Comprehensive Analysis Towards a New Wave of Integration*, honors in the Major Thesis , The Florida State University , College of Social Science and Public Policy, p.61
- ^{cii} LAURSEN, F (2003) *Comparative Religion Integration*; Ashgate p.40.
- ^{ciii} ECJ, 1964, the case established the supremacy of EU law over domestic laws of its members.
- ^{civ} KILANGI, A (2013) *Legal Personality, Responsibility & Immunity of the African Union: Reflection on the Decision of the African Court of Human & Peoples’ Rights in the Femi Falana Case*, The African Union Commission of International Law (AUCIL) AUCIL Journal of International Law, p.116.
- ^{cv} SIMON, P (2014) *The Approach of Supranationality in the East African Community; An examination of the Practice of East African Court Of Justice*, SAUT LL.M Dissertation p.20.
- ^{cvi} See Article 308,309 and 310 of the Treaty Establishing the European Union.
- ^{cvi} Article 8(4) of the Treaty Establishing the East African Community, which provides that; Community organs, institutions and laws shall take precedence over similar national ones on matters pertaining to the implementation of this treaty”
- ^{cvi}iii FAGBAYIBO, B (2013) *Common Problems Affecting Supranational Attempts in Africa: an Analytical Overview*, PER, Vol. 16 No. 1 2013 p. 33.
- ^{cix} Article 8 (4) & (5) of the Treaty Establishing the EAC (As amended on the 14/12/2006 and 20/08/2007). See also GALLERIZO, A (2013) *The Functioning of the East African Community; Common Market, Court of Justice and Fundamental Rights*, A comparative study with the European Union, Laiden University, at www.media.laidenuniv.nl/finalssummary – Accessed on 30/10/2021.
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- ^{cx}i MEI, A. P (2009) *The East African Community: Bumpy Road to Supranationality*, Maastricht Working Papers, p.4
- ^{cxii} *Peter Anyang’ Nyong’o and others v. Attorney General of Kenya and Others*, 1 EALS Law Digest 2005-2011 136 In the case it was declared that the rules of elections applied by Kenya National Assembly infringed Article 50 of the EAC Treaty and that it was inconsistent with the same provisions.
- ^{cxiii} Supra.
- ^{cxiv} *Ibid.*
- ^{cxv} ANNE PIETER VAN DER MEI (2009) *Regional Integration: The Contribution of the Court of Justice of East African Community* – See <http://www.zaoerv.de> – Accessed on 23/05/2021.
- ^{cxvi} <http://legal-dictionary.thefreedictionary.com> – Accessed on 08/09/2021.
- ^{cxvii} BROWNLIE, I (2008) *Principles of Public International Law*, Oxford University Press.p. 76.
- ^{cxviii} Article 1 of the Montevideo Convention on the Rights and Duties of States.
- ^{cxix} KELLER, R. (2013) *Building “Nuestra America” National Sovereignty and Regional Integration in the Americas*.ContextoIntenacional, Rio De Janero, Vol. 35 no. 2 pp. 537-564.
- ^{cxx} MATTLI, W *Sovereignty Bargains in Regional Integration*, p 150 – See <http://www.jstor.org> - Accessed on 10/09/2021.

^{cxxi} It a principle that is universally accepted that sovereignty is an attribute to statehood and that only states can be sovereign. See HANNUM, H(1996) *Autonomy, Sovereignty and Self Determination: The Accomodation of Conflicting Rights*, University of Pennyslvania Press, Philadephia. P.15

^{cxxii} [http://helda.helsinki.fi/bitstream/handee/10138/21770/regional .pdf?square=2](http://helda.helsinki.fi/bitstream/handee/10138/21770/regional.pdf?square=2) –Accessed on 08/09/2021.

^{cxxiii} *Ibid.*

^{cxxiv} ALMEIDA, P.R (2013) *Sovereignty and Regional Integration in Latin America; A Political Conundrum?ContextoIntenacional Rio De Janero*, Vol. 35 p 471 -495.

^{cxxv} RUHANGISA Above

^{cxxvi} HERMAN, C etal,(2012) *European vair bool of International law* at <http://books.google.co.tz> – Accessed on 11/12/2020

^{cxxvii} *Supra* fn 121

