

UNIVERSITY OF THE WESTERN CAPE

FACULTY OF LAW

**LEGAL IMPEDIMENTS TO REGIONAL
INTEGRATION IN THE GREAT LAKES REGION**

**A Mini-thesis submitted in partial fulfilment of the
requirement for the degree of MPhil**



Name: JEAN PAUL MUSEMA-KILUKA
STUDENT N0: 3180138

Supervisor: Professor P. LENAGHAN

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Economic Community of the Great Lakes Countries (ECGLC)

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Free trade

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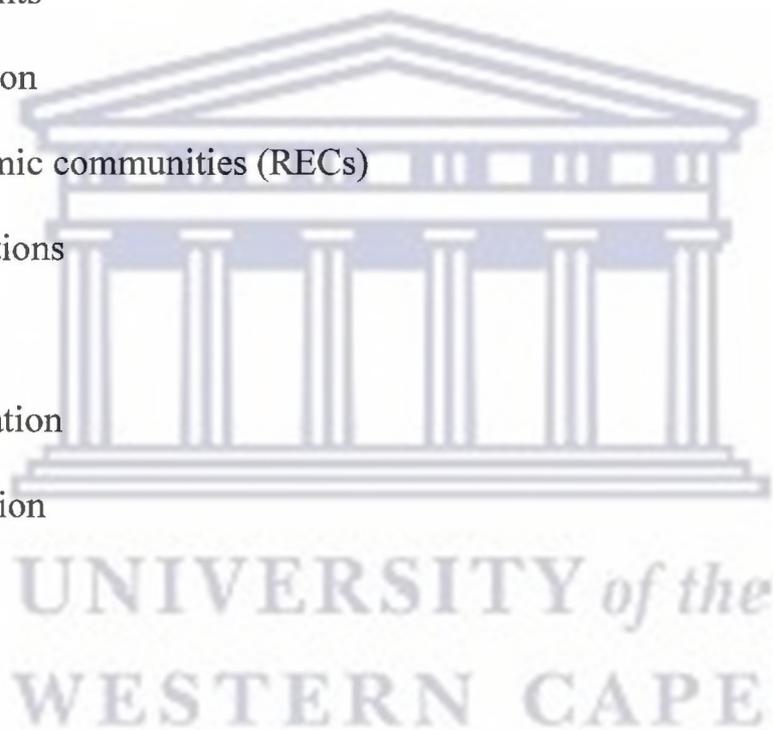
Regional economic communities (RECs)

Regional institutions

Regional trade

Regional Integration

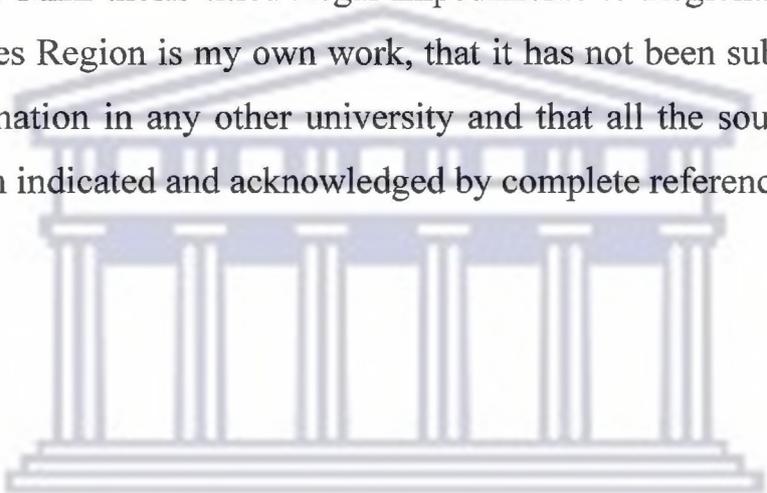
Trade liberalisation



DECLARATION

I declare that the Mini-thesis titled Legal Impediments to Regional Integration in the Great Lakes Region is my own work, that it has not been submitted for a degree or examination in any other university and that all the sources used or quoted have been indicated and acknowledged by complete referencing.

JEAN PAUL MUSEMA-KILUKA

The logo of the University of the Western Cape, featuring a classical building facade with six columns and a pediment.

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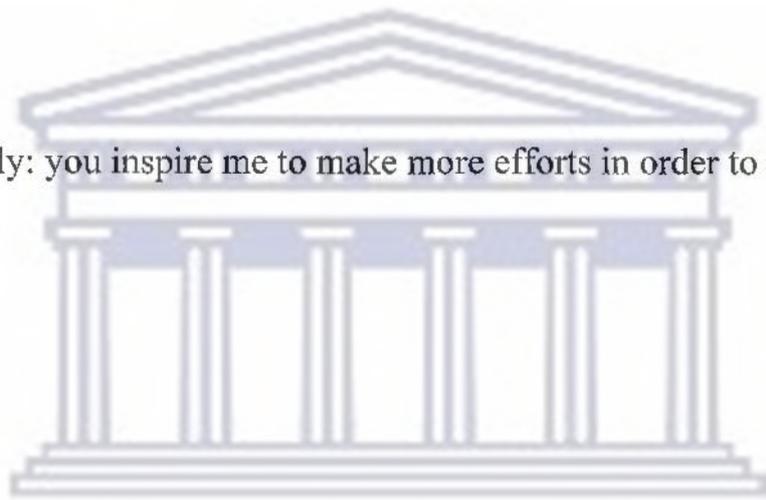
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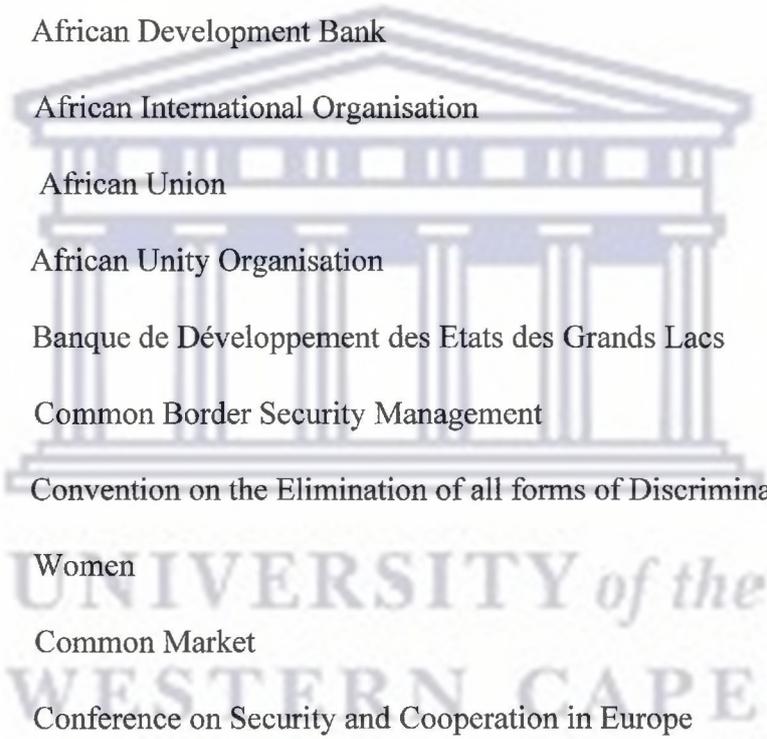
DEDICATION

To my family: you inspire me to make more efforts in order to succeed.



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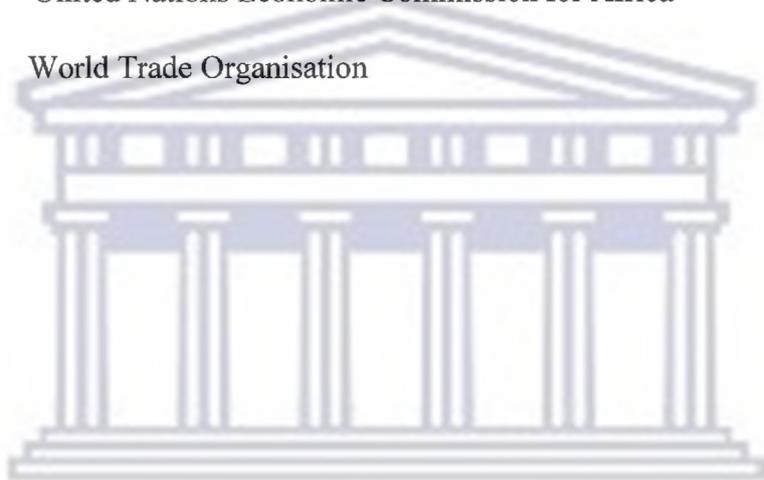
LISTE OF ACRONYMS



ACM	African Common Market
ACU	Africa Customs Union
ADF	Allied Democratic Forces
AEC	African Economic Community
AfDB	African Development Bank
AIO	African International Organisation
AU	African Union
AUO	African Unity Organisation
BDGL	Banque de Développement des Etats des Grands Lacs
CBSM	Common Border Security Management
CEDAW	Convention on the Elimination of all forms of Discrimination against Women
CM	Common Market
CSCE	Conference on Security and Cooperation in Europe
COMESA	Common Market for Eastern and Southern Africa
CU	Custom Unions
DRC	Democratic Republic of the Congo
DSU	Dispute Settlement Understanding
ECGLC	Economic Community of the Great Lakes Countries
EAC	Easter African Community
ECCAS	Economic Community of Central African States

EGL	Organisation de la CEPGL pour l'Énergie des Grands Lacs
FDLR	Forces Démocratiques pour la Liberation du Rwanda
FTAs	Free Trade Agreements
GATT	General Agreements on Tariffs and Trade
IDPs	Internal Displaced Persons
ICGLR	International Conference of the Great Lakes Region
ICT	Information and Communication Technologies
IGAD	Inter Governmental Authority on Development
IMF	International Monetary Fund
IRAZ	Institut de Recherche Agronomique et Zootechnique
ISI	Import Substitution Industrialisation
GoFs	Group of Friends of Great Lakes Region countries
LRA	Lord's Resistance Army
MFN	Most Favoured Nation
MU	Monetary Union
NALU	National Army for the Liberation of Uganda
NCM	National Co-ordination Mechanism
NCMCM	National Coordination Mechanisms and Collaborative Mechanisms
NGOs	Non-Governmental Organisations
OAU	Organisation of African Unity
OHADA	Organisation pour l'Harmonisation en Afrique du Droit des Affaires
PADGG	Programme of Action for Democracy and Good Governance
PTAs	Preferential Trade Agreements
RECs	Regional Economic Communities

RTAs	Regional Trade Agreements
SADC	Southern African Development Community
SACU	Southern African Customs Union
SFRD	Special Fund for Reconstruction and Development
SINELAC	Société Internationale d'Electricité des Pays des Grands Lacs
UN	United Nations
UN/SC	United Nations/Security Council
UNECA	United Nations Economic Commission for Africa
WTO	World Trade Organisation



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CHAPTER ONE

INTRODUCTION

1.1 Background to study

The Great Lakes Region has long been viewed as a land of untapped economic potential due to, amongst other factors, the failures of the Economic Community of the Great Lakes Countries (ECGLC)¹ and the Rwandan genocide. The region has many opportunities and common initiatives despite tensions among its core countries. Cross-borders trade, common infrastructures and common border security zones operations have shown that regional integration is possible within the region.

From the Dar-Es-Salaam Conference and Declaration² in November 2004, and thereafter, the signing of the International Conference on the Great Lakes Region (ICGLR) Pact³ in Nairobi, in 2006 the Group of Friends (GoFs) and the member states plus international non-governmental organisations (NGOs) took a stance to build for the future of the region. They created this new regional integration initiative in order to achieve peace. Peace has multiple dimensions and implications among which poverty alleviation and building of common future in the region are crucial and conducive to increase of population resources.⁴ Poverty alleviation, sustainable management of common infrastructures, trade and security can be effectively achieved by integrating economically the region.

The ICGLR and the ECGLC are two different integrating organisations within the region. They overlap each other and operate with almost same member states with the ECGLC three member states and the ICGLR⁵ having twelve member states. The two integrating organisations member states considered their challenges and different potentialities within the two interlinked regions and chose building and the revival of common infrastructures, sound common international trade policies, common agronomic

¹ The Economic Community of the Great Lakes Countries (ECGLC) was created in 1976, in order to bring together three countries, namely Rwanda, Burundi and the DRC. Headquartered in Gisenyi, Rwanda the organisation is in disarray by major crisis undergoing in the region and its spectrum.

² Declaration establishing a new mechanism of regional co-operation in the Great Lakes Region; born from UN and AU initiatives undertaken in 1999 and launched in 2004 with aims to find solution to the multitude of problems that confront the region among which regional economic integration.

³ Signed on 15 December 2006 and the Secretariat fully operational in 2008 after its impressive speedy ratification available at www.cirgl.org/ (accessed 20 October 2013).

⁴ Schiff M & Winters L 'Regional Integration as Diplomacy' 1996 11 available at www.elibrary.worldbank.org (accessed 20 October 2013).

⁵ ICGLR has twelve member states: Angola, Zambia, Tanzania, Burundi, Rwanda, Republic of Congo, Kenya, Democratic Republic of Congo, South Soudan, Central African Republic, Soudan and Uganda. Headquarter is in Bujumbura.

researches and common energetic policies in order to alleviate poverty and promote sustainable development indeed. These choices have been made by considering the preconditions that exist for increased trade and other forms of regional cooperation. Research, refugee issues, human rights, democracy, sustainable development, gender equality, the energy and banking sectors constitute major challenges which can be efficiently addressed within a system of regional integration through the legal system.⁶

One of the various roots of conflicts and violence in the Great Lakes Region lies in the discrepancies and the inconsistency in the application of the “rule of law.” Treaties, protocols, regulations, decisions, principles, objectives and general undertakings have been signed by member states to regional integration organisations in the region and form the law of the communities. Regional integration basically, is governed by the rules which preside to its creation and guarantee its functions and successes.⁷ The Great Lakes Region suffers from the delays in the ratification and domestic incorporation of regional legal instruments by member states of many instruments which demonstrate the eventual failure of the implementation of regional integration schemes.

Specific provisions of integrating agreements such as duly negotiated agreements fail to be implemented and, sanctions for such lack of implementation or the application of sanctions do not exist.⁸ Legal apparatus are subjected to an overwhelming predominance of politics in the weak and post conflict core member states institutions which will lead to the reinforcement of culture of impunity in the region. The ECGLC precedent failure was mostly due to that impunity climate created by the three dictatorships and their associates in DRC, Burundi and Rwanda. Rather than fulfilling its role of social cohesion, law as a carrier of ‘society’s structures and systems from the past into the future’⁹ is at cross road in the Great Lakes region.

Rwanda, Burundi and DRC are emerging from a long period of these failed justice periods which affected their state institutions and the economic integration mechanisms of the region. Their monist systems of law should guarantee the future of upholding regional

⁶Strategy for Swedish support to the African Great Lakes Region Including country strategies for Rwanda, the Democratic Republic of the Congo and Burundi (November 2004 – December 2008) 8 available at www.regeringen.se/ (accessed 20 October 2013).

⁷ Oppong F R *Legal Aspects of Economic Integration in Africa* (2011) 117.

⁸ Bwenge A B ‘D’une CEPGL à une autre: quelles alternatives dans les stratégies actuelles d’intégration et de coopération pour le développement?’ 2010 2 available at www.codesria.org/IMG/.../5-Bwenge.pdf (accessed 20 October 2013).

⁹ Allot P ‘The true function of Law in the International Community’ (1998) *IJGLS* vol. 5, available at www.repository.law.indiana.edu/ijgls/vol5/iss2/2 (accessed on 20 October 2013).

integration engagements and possibly the enforcement of regional integration instruments which lacked in the past. However many legal arrangements have been established with focus on pursuing a common regional integration agenda within the ECGLC and the ICGLR, but the lack of mechanisms to oversee the respect of rules and transparency amongst partners is being a challenging block to the rule of law and to real integration of the region.

The application of the rule of law (agreements, conventions and other policies directives) at national and inter-states level is not only relevant to a discussion about the role of governments in regional integration, but also to other stakeholders' participation such as the private sector.¹⁰ As all over Africa, regional integration has however been challenged by a lack of implementation and political commitment by member states within the RECs. Nevertheless, the links between poverty and security within the region, international cooperation, trade and hope of better life are at stake in the region.

1.2 Problem statement

The Great Lakes Region countries are among the poorest countries of the world irrespective of the rare and precious resources found within the region.¹¹ They are landlocked and have small size economic markets. The need for poverty alleviation from increased trade mechanism or programs in the region is real and compel to the rule of law which guarantees rights and civil liberties and assures the pre-eminence of law in the interest of all, because law and its systems 'enact in a particular form the common interests of the society as a whole'¹² like in peaceful settling of disputes and re-establishing regional equilibrium for peace and prosperity between member states.

The three former Belgian colonies the DRC, Rwanda and Burundi (core countries) ratified the commonly known as the ECGLC Treaty¹³ but the ICGLR goes beyond this territorial delimitation and covers a larger territory meaning more countries and more players and interests. All these three core countries are through post conflict period with weak institutions, lack of bilateral or multilateral trust amongst themselves, and scattered loyalty between overlapped instruments for regional integration. Those instruments provide for

¹⁰ Oppong F R *Legal Aspects of Economic Integration in Africa* (2011) 188-9.

¹¹ Bwenge A B 'D'une CEPGL à une autre: quelles alternatives dans les stratégies actuelles d'intégration et de coopération pour le développement?' 2010 3 available at www.codesria.org/IMG/.../5-Bwenge.pdf (accessed 20 October 2013).

¹² Allot P 'The true function of Law in the International Community' (1998) *IJGLS* vol. 5, available at www.repository.law.indiana.edu/ijgls/vol5/iss2/2 (accessed on 20 October 2013).

¹³ Treaty establishing the Economic Community of the Great Lakes Countries (CEPGL) was signed on 20 September 1976 between Rwanda, Burundi and the DRC in Gisenyi available at www.cepgl-ceppl.or/ (accessed 20 October 2013).

duties and obligations to member states among themselves and towards their people and the region. The implementation of these instruments is impeded by political, economic and social factors and mostly legal. All three have monist constitutions embodying their former colonial system of law philosophy but experiment challenges for implementing international and regional instruments in their respective countries; their RECs legal institutions exist only in the texts but not in reality.

The two RECs are undergoing a proposed bipartite alliance not defined yet, but many regional instruments have been laid down and need the bipartite common agreement for their implementation. Interestingly the proposed bipartite alliance of the two RECs insists on common infrastructures building and revival in the region as a means of regional cooperation and collaboration¹⁴ but not on legal issues.

However, it can positively argued that the two RECs and their bipartite are developing in overlapped instruments and organisations setups, non-achieved trade barriers removal and free movement of persons and goods, erratic implementation and unresolved legal hindrances. They have multiple challenges to overcome amongst which those related to community law implementation. They have made little progress to tackle the aforementioned challenges with regional integration tools but the majority of the Great Lakes Region's people still lives in poverty and the three core countries are at latent war especially Rwanda, DRC, Uganda and Burundi.¹⁵ The different projects in form of agreements are in abeyance and taking long to be ratified and implemented. If the above RECs performance is to become true, the question then arises as to how their bipartite will be different and achieve hoped benefits without tackling these legal hindrances.

1.3 Research Question

The study seeks to examine the extent of legal limitations that may impact on regional integration in the Great Lakes Region. It undertakes the goal of answering the following related questions:

1. What are the features of regional integration in the ECGLC and ICGLR instruments?
2. Do the ECGLC and ICGLR instruments meet international standards for regional integration?

¹⁴ Westerkamp M, Moira Feil M & Thompson A 'Regional Cooperation in the Great Lakes Region A contribution to peacebuilding?' 2009 19 www.initiativeforpeacebuilding.eu (accessed 10 January 2014).

¹⁵ Prunier G *From Genocide to Continental War: the 'Congolese' Conflict and the Crisis of Contemporary Africa* (2011) 172-9.

3. What are legal limitations in the Great Lakes Region integration legal framework?
4. Can Great Lakes Region integration instruments be reformed, if yes, to what extent?

1.4 Aims of the Research

The research aims to analyse ICGLR and ECGLC regional integration instruments in order to establish legal factors that hinder the integration benefits and gains. It develops the argument that upholding the rule of law in regional integration schemes lead to sustainable development and poverty reduction, particularly on improving people's lives and conserving the world's natural resources following rapid population growth with ever-increasing demands.

The study will analyse the role of the two RECs in regional economic integration of member states, with focus on the extent to which they have aided infrastructures and trade liberalisation since their establishment. It further aims to establish why there is a need for the proposed Bipartite, its functions and the challenges of addressing regional cooperation and integration for the purpose of poverty reduction and growth.

1.4 Significance of the Study

As an engine of economic growth and cooperation, regional integration has the potential to bring together enemy countries by forging a common future. It has the capacity of creating conditions conducive to development through jobs creation which result in better social outcomes and reduce poverty. These benefits are unattainable in general and in the Great Lakes region in particular unless legal impediments are not addressed within regional instances with the broader member states participation. This pre-requires require domestication and enforcements of regional instruments.

The common ECGLC infrastructures withstood wars and the crisis shocks within the Great Lakes region and united Rwandese, Congolese and Burundians in serving the people of the region but hindrances minimised their gains by lack of accountability of member states and their commissioned. Legal harmonisation, implementation, enforcement of regional instruments in the Great Lakes Region is of critical importance to regional integration components as industrial and infrastructure development, market integration, trade and economic growth and thus to lead towards a better social dividends for poverty alleviation.

1.6 Research Hypothesis

Existing thinking has advanced many arguments on regional integration in Africa and this mini-thesis seeks to test three of these arguments as outlined below. The real question is

not whether there should be co-operation or integration, but rather to identify that combination of co-operation, coordination and integration, that is realistic and feasible under prevailing conditions.¹⁶

The ECGLC-ICGLR Bipartite will better serve the Great Lakes Region people by harmonising the regional legal integration framework as opposed to individual REC's. Regional integration, growth and infrastructure development relationship will result in better social outcomes by the fact that there is a close relationship between regional integration, growth and infrastructure, which supports the need to focus on regional solutions.¹⁷ Regional Integration in the Great Lakes Region is hampered by overlapping instruments, inability to uphold the rule of law and plurality of legal systems as such ECGLC and ICGLR Communities are due to fail. It is therefore challenging to predict the successes from the Bipartite with the newly ICGLR initiative.

1.7 Methodology

This Mini-thesis undertakes the desktop approach to investigate the topic of regional integration in Africa and specifically the Great Lakes Region. It focuses on the ECGLC and ICGLR regional integration instruments and took a stance of confronting legal hindrances within and their impact on the region's future. Therefore, laws, policy documents, reports and relevant literature will be consulted. Researches and reports in the field, books, law reviews will be used as primary and secondary sources.

1.8 Literature review

The literature review based will not exclusively focus on formal or informal integration, nor on systematic analysis of the process, end result, but will target different legal hindrances on regional integration in the Great Lakes Region. Regional integration is an engine for poverty alleviation by the fact that it initiates a process¹⁸ of high level of cooperation among countries involved and draws them to 'ever-closer cooperation.'¹⁹ The process and the end result of the cooperation²⁰ attract investment opportunities in the region

¹⁶ Chingono M & Nakana S 'The challenges of regional integration in Southern Africa' (2009) 3 10 *Africa Journal of Political Science and International Relations* 397 available at www.academicjournals.org/ajpsir (accessed on 15 April 2013).

¹⁷ Abuka, C 'Africa in the World Economy-The National, Regional and International Challenges' 2005 116 available at www.econ.ucdavis.edu/~McCord-Sachs... (accessed on 15 April 2014).

¹⁸ Haas E 'Turbulent Fields and the Theory of Regional Integration' 1976 184-5 available at www.maihold.org (accessed 05 January 2014).

¹⁹ Preamble Treaty Establishing the EEC (1957).

²⁰ Etzioni A *Political Unification. A Comparative Study of Leaders and Forces* (1965) 65-68.

which generate growth, trade, employment and sustainable development which address efficiently the issue of poverty²¹.

Lyakurwa in his focus on the trade and investment integration in sub-Saharan Africa reveals that regional integration in sub-Saharan Africa is not a recent phenomenon. At least two unions, the Southern African Customs Union (SACU) and the East African Community (EAC) have existed since 1910 and 1919, respectively.²² He explains further that the different motivations for regional integration mechanisms creation in sub-Saharan Africa have been linked to politic and economic disillusionment with international economic systems and politic which are unfavourable to developing countries.

Similarly, Hettne²³ et al. argue that in order to counter the effects of a turbulent global political and economic system and especially to arrest their marginalisation, developing countries need to integrate their national political and economic systems. They present regional integration as a response to the marginalisation. Extensive critics have been levelled at RECs institutions and leaders for their inability to produce effective and sustainable growth, socio economic dividends in order to alleviate poverty and lay the foundation of sustainable development in Africa. Kabamba²⁴ argues that the ECGLC institutions were corrupted by leaders' interpersonal relations than integrative capacities which sacrificed interstate cooperation and destroyed common integrative initiatives. He substantiates the lack of political will and commitment, which are great challenges in the Great Lakes Region specifically.

Opping insists on managing relational issues²⁵ within the RECs as instruments of sound cooperation. In regional integration, there is a close relationship between growth, infrastructure development and investment for better social outcomes.²⁶ Soludo and Osita illustrate that nowhere else in Sub-Saharan Africa's (here referred as Africa) has growth tragedy been more dramatic than in the areas of trade and

²¹Kresge T D et al *Regions and Resources/ Strategies for Development* (1984) 192-3.

²² Lyakurwa W 'Trade and Investment Integration in Sub-Saharan Africa, Regionalism and the Global Economy: The Case of Africa' 1996 116 available at www.fondad.org (accessed 20 October 2013).

²³ Hettne B, Inotai A & Sunkel O *Globalism and the New Regionalism* (1999) 26-9.

²⁴ Kabamba B *Inter regionalité des pays des Grands Lacs Africains. Elaboration d'un modèle d'intégration regionale et son application a la region des Grands Lacs Africains* (Unpublished PhD Dissertation, University of Liege 2000) 56.

²⁵ Oppong F R *Legal Aspects of Economic Integration in Africa* (2011) 3.

²⁶ Seetanah B, Ramessur S and Rojid S 'Does infrastructure alleviates poverty in Developing countries?' *International Journal of Applied Econometrics and Quantitative Studies* (2009) Vol.6 17-36.

industrialisation.²⁷ They demonstrate that the policy of Import Substitution Industrialisation (ISI) and the liberal regime trade liberalization, both policies have apparently failed to bring deliverance to Africa by common denominator known as 'implementation failure'. They insist on lack of industrial policy which leads to no 'discernable difference' in the livelihood of different communities.

Researches have shown that there is a close relationship between regional integration and infrastructure²⁸ which support arguments for focussing on building intra-regional capacities to reduce poverty. In the words of Obademi, enhanced access to global markets for the sale of goods and services and poverty reduction are among the benefits of globalisation.²⁹ Countries as China, India, Brazil, Russia and South Africa have benefited positively from the globalised system in the world mostly at certain extent by having efficient infrastructure. The global markets are for the sale of goods and services produced by infrastructures from all countries of the world and the amount of benefits and their impact on livelihood of the population are interlinked as consequences. By integrating economically, countries minimise globalisation effects on poor economies mostly from the developing countries like Great Lakes Region states.

The link between regional integration, growth and infrastructure, peace and cooperation, investment and poverty alleviation has been also acknowledged by Great Lakes Region leaders.³⁰ Adequate infrastructure is described as the main conduit for businesses in the region. The movement of people, goods and services, import and export depend on infrastructure in the region. Without adequate infrastructure for production and commercialisation, the dumping politic find a better place in the region and with it the poverty and alienation. Extensive criticism has been also levelled on the Great Lakes Region integration record.

The contribution made by Heyl³¹ in this regard is significant as she describes the ICGLR as a prototype of the Conference on Security and Cooperation in Europe (CSCE).

²⁷ Soludo C and Osita O (eds) 'A synthesis of major themes in the political economy of trade and industrialisation in Africa' in *The politics of trade and industrial policy in Africa: Forced consensus?* (2004) 1 – 40.

²⁸ Abuka C 'Africa in the World Economy-The National, Regional and International Challenges' (2005) 116 available at www.fonded.org (accessed on 15 April 2014).

²⁹ Obademi, O et al *Marginality and crisis/ Globalization and identity in contemporary Africa* (2010) 169.

³⁰ ICGLR Pact on security and peace in the Great Lakes Region (2006) 6.

³¹ Heyl C 'The International Conference on the Great Lakes Region- An African CSCE?' 2010 available at www.kas.de/wf/.../kas_21242-544-2-30 (accessed 10 October 2013).

Heyl explains that the organisation is an International Community Initiative for security purposes. Heyl is apparently confused by the introduction of Special Fund for Reconstruction and Development (SFRD) within the ICGLR Pact which is only illustrating the real challenges of building and renovating regional infrastructures in order to generate sustainable socio economic outcomes.

Most of the aforementioned literatures address regional integration in theory and in practice, formal and informal. Some addresses Great Lakes regional integration questions and identify multiple challenges. However, the scholars do not focus on the normative or descriptive content of the ICGLR and ECGLC instruments and their implementation Great Lakes Region. None of the authors focus only on the legal hindrances of these instruments and their impact on trade, industry and poverty alleviation. Considerable attention has been given to addressing the different RECs in the region but draw their conclusions on certain limited number of facts and ignoring or minimising the law. Therefore, this mini-thesis addresses a variety of literature with different analytical methods.

1.10 Limitations of proposed study

This research will focus exclusively on the two RECs in the Great Lakes Region of Africa and their instruments with focus on trade, industry and poverty alleviation policies between ICGLR and ECGLC. It considers the fact that the two regions are in fact one, in terms of geographical location, but not legally.

The study looks at the challenge of managing crucial relational issues between the communities, and within their policies, aims and principles. It examines the legal issues which undermine the success of regional integration and question their impact on trade, growth and poverty alleviation.

The Great Lakes Region is trapped within overlapped RECs like the Eastern African Community (EAC)³², the Southern African Development Community (SADC)³³, the Intergovernmental Authority on Development (IGAD)³⁴ and Economic Community of Central African States (ECCAS)³⁵, the ECGLC and ICGLR for example. These overlapped

³² Kenya, Uganda, Tanzania are EAC members and Rwanda and Burundi are members of ICGLR and ECGLC.

³³ Angola, DRC, Tanzania, Republic of Congo and Zambia are SADC member states and ICGLR only, while DRC is ECGLC member state also.

³⁴ Soudan, South Soudan, Uganda and Kenya are IGAD member states and ICGLR only.

³⁵ ECCAS: Angola, Central African Republic, DRC, and Republic of Congo are member states they are also ICGLR members; only the DRC is the only ECGLC member also.

communities are active within the region but only the ECGLC and ICGLR have proposed a bipartite as one of crucial means of regional integration and peace building mechanism.³⁶ Therefore, this study will exclude EAC, SADC, IGAD and ECCAS.

1.11 Chapters overview

This mini-thesis will be divided into five chapters as follows: Chapter 1 will provide the context of the research, problem statement, aims, methodology, and chapters' overview.

Chapter 2 addresses the distinction between legal impediments and legal enhancements in regional integration through conceptual approaches. Among other things, it examines the general background on the Great Lakes Region integrating legal instruments (ECGLC and ICGLR).

Chapter 3 will examine the international and regional legal framework and other developments governing regional integration.

Chapter 4 will discuss legal impediments impact on regional integration in the Great Lakes Region: community law, Common infrastructures, trade openness and sustainable development.

Chapter 5 will encompass recommendations and conclusions after evaluation done.



³⁶ The ECGLC and the ICGLR have focus on the Great Lakes integration.

CHAPTER TWO

CONCEPTUAL APPROACH AND GENERAL BACKGROUND

2.1 Introduction

There is no clarity regarding the nature of regional integration. Hence, the confusion surrounding its definition and its use to describe co-operation, free trade, customs union, common market. But lawyers are more interested in defining regional integration by reference to its legal dimension.

Langhammer and Hiemenz define regional integration as a process aimed at abolishing discrimination between local and foreign goods, services, and factors.³⁷ This definition does not help in describing legal dimension since it describes the process but does not explain the basis on which it unfolds. Goode says that a regional integration arrangement is a bilateral or regional agreement not limited to a regional trade arrangement, as it pursues an economic integration agenda, *inter alia*, through the harmonisation of diverse domestic policies.³⁸ He emphasises the contractual dimension of regional integration and its legal consequences.

From a contractual perspective, there are legal enhancements of and legal impediments to regional integration which flows from the agreement. These factors are crucially important in the development schemes or in the process of economic, political and social integration within the region by the fact that regional integration covers specific areas determined in the agreement by the member states such as: trade, industry, infrastructure, tourism, investments etc. Regional integration creates a set of multidimensional activities and relations which can be efficiently managed only through effective community law, without which successes are not achieved.

2.2 Conceptual approach

The quest for legal impediments to the integration can be more challenging unless certain concepts are clarified. In this regard, scholarly works provide clarity and precision in order to define the different concepts often used to describe regional integration mechanisms

³⁷ Langhammer R & Hiemenz U *Regional integration among developing countries/ Opportunities, obstacles and options* (1990) 2 available at www.econstor.eu/.../416.../025664646 (accessed 30 January 2014).

³⁸ Goode W *Dictionary of Trade Policy Terms* (2003) 302.

and instruments. The terms that need clarification are: community law,³⁹ legal impediments, free trade, poverty alleviation, regional integration and trade liberalisation.

2.2.1 Community Law

International organisations such as, the Economic Community of the Great Lakes Countries (ECGLC) and the International Conference of the Great Lakes Region (ICGLR), deal with innumerable issues related to their capacities: finances, staff members, institutions, independence and autonomy in general. Such legal regulation confers on the international organisation, its ability to impact on member states development, by its laws and its expressed autonomy entrenched within its own legal personality. Sometimes, the autonomy of an organisation is expressly provided for in its founding treaty.⁴⁰ The founding treaty may provide for the exclusive or final jurisdiction of the organisation's judicial institutions in order to interpret its instruments. According to Schilling, such provision is qualified as 'interpretive autonomy'.⁴¹

However Oppong insists that an economic community is not a State. However, it shares an attribute with a State, which is important as far as its vertical and horizontal relations are concerned: it constitutes a legal system with law-making and enforcement powers.⁴² He establishes some elements which constitute this legal system, among which, the rules of conduct which regulate different actions and activities, and that, there must be defined entities to which the rules apply or are related.

In analysing this community law, one can notice both legal enhancements established for the triumph of the common cause and allowing the community to carry out its mandates, and also legal impediments which hamper the effective accomplishment of its missions. In this respect, the Great Lakes Region's integrative organisations (the ECGLC and the ICGLR) each established community laws for their efficient performance.

³⁹ Oppong F R (2011) 189. Community law encompasses founding treaties of the regional economic communities which contains all communitarian provisions on relations between community and national law.

⁴⁰ Sorensen M 'Autonomous legal orders: Some considerations relating to a systems analysis of international organisations in the World Legal Order' (1983) 32 *International and Comparative Law Quarterly* 559.

⁴¹ Schilling T 'The autonomy of the Community legal order: An analysis of possible foundations' (1996) 37 2 *Harvard International Law Journal* 389- 90 available at www.heinonlinebackup.com/ (accessed on 30 January 2014).

⁴² Oppong R F *Legal Aspects of Economic Integration in Africa* (2011) 37.

2.2.2 Legal impediments and legal enhancements

From its powers, legal status, mode of application of its laws as well as the character of its dispute settlement institutions which constitute the organisation's autonomy, one can discover the provisions that affirm its autonomy and the distinctiveness of its legal personality from those of the Member States. But this solid foundation can only be achieved by the organisation's work, work of its personnel and its institutions for the benefit of the Member States and their people. These elements can constitute enhancements to efficient integration or can be distorted and produce contrary effects.

More often however, the economic community and/or Member States are under pressure of circumstances which oblige them to develop obstructive behaviours and measures in order to ease tensions or to divert attention from their inability to cope with challenging issues. These measures can obstruct and put in jeopardy the effectiveness of economic community's law and render it ineffective in dealing with community challenges. The measures can be tariff or non-tariff barriers erected for economic, political or social purposes within the community. They can be established by Member States themselves, wishing to protect their own interests irrespective of their membership, or by the community law itself (through its instruments), or by the economic community's personnel work performance or incompetence to discharge their duties.

But legal enhancements are considered as incentive provisions within the community law instruments or Member States national instruments.⁴³ An incentive for regional co-operation and integration is the possibility that as a regional bloc it could set uniform standards for products and harmonise such standards with similar international standards. These legal enhancements are conducive to the creation of trade growth by improving infrastructure and transport links. Not only will this make trading in the region easier, it will open up other trade opportunities since the region is strategically situated at the crossroads in eastern Africa between the oil rich countries in West and North Africa and the dynamic economies of the Southern African Development Community (SADC) region.

2.2.3 Free trade

The terms Free Trade is linked to Area and form the popularly known words Free Trade Area. In general, it covers all different movements (imports and exports) which cross

⁴³ United Nations Development Programme 'Trade and human development/A practical guide to mainstreaming trade' (2011) 10 available at www.undp.org/poverty (accessed 30 June 2014).

borders in and out of one country to another or others. These imports and exports are subject to different sets of regulations which may be less or more constrained, or prohibitive. The constraints are determined by the kind of co-operation linking the different partners. The partners can have free trade agreement for the purpose of giving each other certain preferential benefits or treatments and creating de facto a free trade area in which reciprocal and non-reciprocal advantages prevail. Article XXIV of the General Agreements on Tariffs and Trade (GATT)⁴⁴ defines a free trade area as ‘a group of two or more customs territories in which the duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated on substantially all the trade between the constituent territories in products originating in such territories.’⁴⁵

Buthelezi defines a free trade area as:

‘A form of economic integration in which there exists free internal trade among countries but each member is free to levy different external tariffs against non-member countries.’⁴⁶

According to the European Union (EU), ‘free trade is more important than ever for economic growth and job creation’.⁴⁷ Through free trade, additional opportunities are created for industrial innovation and stronger production growth. Following these movements, direct foreign and internal investment flow and with them production and services and jobs creation increase with dividends for poverty alleviation.

2.2.4 Poverty alleviation

This is also known as poverty reduction by virtue of the fact that it encompasses strategies and policies established and applied in order to reduce poverty in a country, the continent or the world. These policies and strategies are undertaken by countries themselves or with the assistance of different partners, like the International Monetary Fund (IMF), the International Reconstruction and Development Bank (World Bank).

The United Nations Development Programme (UNDP) links poverty alleviation with trade policies development planning. It stresses that,

⁴⁴ GATT was a multilateral agreement regulating international trade. From its preamble, it outlines its purpose which is the substantial reduction of tariffs and other trade barriers and strive for the elimination of preferences, on a reciprocal and mutually benefits. Negotiated under the UN Conference on trade and employment, it was the result of the failure of creating the International Trade Organisation. Signed in 1947, it was replaced by the WTO in 1995.

⁴⁵ Article XXIV 8 (b) of the GATT.

⁴⁶ Buthelezi S *Regional Integration Prospects & Challenges for the 21st Century* xiv (2006) 2.

⁴⁷ The EU Commission on trade ‘the EU explained’ 2013 5 available at www.europa.eu/pol/index_en.htm (accessed 30 June 2014).

‘To have the desired impact on poverty reduction and human development, trade should be an integral part of overall development planning. Once the role of trade is established within a coherent national policy context, trade-related needs will be better defined, prioritized and sequenced.’⁴⁸

This means integrating trade issues into a broader development planning in order to maximise its gains and build for better life all community members.

2.2.5 Regional integration

Although integration and co-operation have to a certain extent been regarded as synonyms, in reality they have different meaning when regarded by reference to their objectives. ‘Contrary to integration, co-operation includes concerted actions aimed at lessening discrimination in certain areas of common interest’.⁴⁹

Goode, Langhammer and Hiemenz gave some insights on regional integration as recalled on point 2.1 in this Mini-thesis, moreover, it is also worth mentioning that according to Balasa explains integration is a process aiming at abolishing discrimination between local and foreign goods, services, and factors.⁵⁰ He emphasises that ‘this process runs through at least four stages: free trade area, customs union, common market, and economic union’.⁵¹ These stages are not linear but from the EU experience, it is preferable to start integration by removing barriers to trade in goods (and services) between Member States.

But Goode, more legalistic than Balasa emphasises on the contractual nature and defines ‘integration’ as ‘a bilateral or regional economic agreement that goes beyond the reach of a regional trade arrangement’. ‘It seeks to achieve a certain degree of economic integration based on, for example, harmonisation of various national policies or the adoption of policies aimed at similar outcomes’.⁵²

It is also important to mention the fact that in Africa, and according to the United Nations Economic Commission for Africa (UNECA), two approaches to regional integration have emerged, namely federalism and liberalism. The first approach is associated with late President of Ghana, Kwame Nkrumah⁵³, who considered paramount political institutions as useful vehicles for bringing about regional integration in other spheres. Nkrumah became

⁴⁸ UNDP (2011) 19.

⁴⁹ Langhammer R J & Hiemenz U *Regional integration among developing countries: opportunities, obstacles and options* (1990) 2 available at www.econstor.eu/.../416.../025664646 (accessed 30 January 2014).

⁵⁰ Balasa B ‘*The Theory of Economic Integration*’ in Langhammer R J & Hiemenz U *Regional integration among developing Countries: opportunities, obstacles and options* (1990) 2 available at www.econstor.eu/.../416.../025664646 (accessed 30 January 2014).

⁵¹ Balasa B (1990) 2.

⁵² Goode W *Dictionary of Trade policy terms* (2003) 292.

⁵³ President Kwame Nkrumah (1909-1972) was the first President of Ghana and one OAU founding father. Pan Africanist, he generally took a non-aligned and revolutionary Marxist stance.

famous for his pan-African dictum; 'seek ye first the political kingdom and everything else shall be delivered onto you'. Proponents of this first school of thought argue that a central political authority would result in hastening the integration process. The second approach is the gradual approach, moving from trade liberalisation (Customs Union), Common Market, Economic and Monetary Union then Political Federation (or Union).⁵⁴

2.2.6 Trade liberalisation

Within the second stage of regional integration, partner countries harmonise their national tariffs against third countries, adopt a common external tariff and form a customs union. They liberalise the circulation of factors of production within and have the ambition to form a common market.

In law especially, trade liberalisation appears with the gradual or complete removal of existing or expected impediments to trade of goods, capital and services bilaterally or multilaterally; with the aim of creating a free trade area ultimately. The conformity to international standards developed by the GATT and the World Trade Organisation (WTO) forms the reference basis. These standards focus especially on trade but time and needs have added on more such as competition policies, mutual recognition, movement of persons, investments.

Great Lakes Region nations, entwined in a mix of bilateral and regional issues have an opportunity through regional integration to work together to manage their numerous common regional issues. For instance, the ICGLR had explicitly created a platform for its members to discuss common issues such as, common border security management (CBSM)⁵⁵ cross-border attacks by armed groups and communities straddling the borders, smuggling, motor vehicle theft, drug trafficking, flow of small arms, land mines and now threats of terror networks drug trafficking.

In South Asia, terrorism, the environment, climate change, food security, intra-region migration, infrastructure, and regional security are some issues which require co-operative

⁵⁴ UNECA *Domestication and Mainstreaming of Regional Integration Processes Instruments and Decisions into National Policies, Legal and Regulatory Frameworks Issues, Challenges and Opportunities – The Case Of Uganda* (2013) 11 available at www.uneca.org/sro-ea (accessed 01 June 2014).

⁵⁵ Joint security management of common borders: initiative taken and platform sets for debate common border issues by ICGLR member states. Border zones continue to constitute security threats to states and communities in the entire Great Lakes Region and in order to address these threats the platform was proposed on 21 September 2006.

deliberation.⁵⁶ These issues forced potential enemies to manage them together at regional level.

After this brief clarification of the relevant concepts, an analysis of the background to the ECGLC and the ICGLR integrating instruments will provide more details for understanding their legal dimensions and provisions.

2.3 General background to regional Integration in the Great Lakes Region

2.3.1 Introduction

Regional integration in the Great Lakes Region has a long history starting from 1976 with the adoption of the Convention creating the ECGLC. The Convention and related instruments did not provide adequately for an effective legal dimension and protection in the region. Protocols on judicial co-operation have been adopted but their implementation stumbled on political issues of sovereignty and the security features of the Convention.

The three military dictatorships⁵⁷ in the Great Lakes Region had a greater interest in promoting the security of their regimes and preventing them from collapsing and disintegrating than regional integration objectives; they focussed on top to bottom integration rather than a combined model or bottom to top integration.⁵⁸ Belgium formed a unique central bank for Congo and Rwanda-Urundi following the royal decree of 27 July 1887 to oversee the economic development in the Great Lakes Region colonies.⁵⁹ But after independence, different crises destroyed major infrastructures in the region and the three dictatorships acquired power in Rwanda, Burundi and Democratic Republic of Congo (DRC). They set the pace for regional integration instruments and momentum in the Great Lakes Region, but the relationship between a dictatorship and legal compliance had been a challenging one.

The ECGLC Convention did not pay the necessary attention to the importance of the rule of law in the region. It only made provisions for a Commission of Arbitrage⁶⁰ which has never been constituted or given the opportunity to serve as a buffer between a dictator's will and the interests of the people or the region. It was after 2006, particularly with the signing of

⁵⁷ The three military dictatorships of Mobutu (DRC), Habyarimana (Rwanda) and Micombero (Burundi) negotiated and ratified the ECGLC Treaty.

⁵⁸ The three dictators thought that the crucial element in integration, is the agreement between the leaders; population will follow the leaders soon or later.

⁵⁹ 'Central Bank of the Congo and Rwanda-Urundi' available at www.nbb.be/.../1952.06.01-BULL (accessed 20 January 2014).

⁶⁰ Article 24 of the ECGLC Convention.

the Dar-Es-Salaam declaration on peace, stability and development (known as the Dar-Es-Salaam Declaration) that the Great Lakes Region legal system began to focus on regional integration again by reviving the ECGLC and its dormant instruments in order to enhance unity and peace among Member States.⁶¹ After that restart, progresses have been made in order to revive regional common initiatives.

On regional integration, the Dar-Es-Salaam Declaration, the Pact and subsequent Protocols provide that Member States have the obligation to adopt a common regional approach for the ratification and implementation of different agreed programs starting with the CEPGL revival as a starting point, in these terms: 'The revival of co-operation and economic integration within the framework of the CEPGL is the way forward for Member States, which could enable them to find solutions to the problems that hinder not only economic and social development but also the restoration of peace and security in the sub-region.'⁶²

The following discussions will focus briefly only on the ECGLC Convention, and then the Dar-Es-Salaam Declaration and the Pact on Peace, Stability and Development (known as Nairobi Pact) in brief. This section, in fact, makes general remarks about these instruments. Accordingly, it has two main parts. The first part gives a general background to the drafting process, substantive contents and challenges of the ECGLC Convention. The second part elaborates on the same issues in relation to the Dar-Es-Salaam Declaration, the Nairobi Pact and related Protocols.

2.3.2 The Economic Community of the Great Lakes Countries Convention

2.3.2.1 Background discussions

Throughout history, we learn that the United Nations (UN) and the Organisation of African Unity (OAU) encouraged African solidarity and co-operation as a panacea for African under development.⁶³ The creation of a regional integration organisation in the Great Lakes Region draws its inspiration from the impact of these ideas and environment on the African continent and geopolitical landscape culminating in the signing of the ECGLC Treaty

⁶¹ Kazadi-Mpiana J *La position du droit international dans l'ordre juridique congolais et l'application de ses normes* (2013) 230.

⁶² The revival of the Economic Community of the Great Lakes Countries and its Specialised Institutions (GLE, SINELAC, IRAZ ET BDGL), Project No. 3.2.1' 2006 2 available at www.lse.ac.uk/.../projects/... (accessed 30 June 2014).

⁶³ See Article 2(1 a, b) of the Organisation of African Unity Charter 1963 and UNECA, 'Assessing Regional Integration in Africa IV: Enhancing Intra-African Trade by the Economic Commission for Africa' 2010 1 available at www.uneca.org

on 20 September 1976 in Gisenyi (Rwanda). Burundi, DRC and Rwanda had dictatorships in place. For these countries, the three main objectives pursued by their military regimes were: security, economic and politic.⁶⁴ For the DRC led by Army General Mobutu, the major focus of the organisation was security; for Rwanda, led by Major General Habyarimana, the focus was the political one of settling once for all refugee questions and for Lieutenant General Micombero, economic matters should take priority. Following the leadership of the DRC, the ECGLC became a community of political co-operation between the three regimes in the region than a regional economic integration organisation. Despite major economic achievements, the organisation was challenged by political factors with the focus principally on security. The three leaders met first, informally, on 29 August 1966 and signed an accord on security matters.

Despite its limited scope this accord was a first step in the regional integration of the Great Lakes Region and was expanded to cover other concerns at later stage.⁶⁵ On 20 March 1967, Great Lakes Region's three leaders met again in Goma and signed a Declaration called the 'Goma Declaration' in terms of which they committed themselves to strive together hand in hand for peace, stability and development of the region. They established a tripartite agreement for the upcoming community for security and development in the region, and promised regular meetings for sharing information and making common decisions afterward.

The 21 June 1975 convention on military matters preclude the provision of back-up camps for any rebel movement in member states, which was reminiscent of the terms of 1966 tripartite accord.⁶⁶ This convention created an environment conducive to the co-operation and trust among the tripartite Member States in a move toward the need for productive co-operation which led to the signing of the ECGLC Convention on 20 September 1976.

The ECGLC Convention is designed to demonstrate the commitment, values, traditions, and development of the Great Lakes Region's countries. Though it is the main constituent of the Great Lakes Region legal integration system, it is important to note the fact that there are also other significant instruments that complete and establish the system, such as, the Protocol on Judicial Co-operation (1975) and the Protocol on Judiciary Assistance signed in 1982.

⁶⁴ Article 2 of the ECGLC Convention.

⁶⁵ Code et lois du Burundi mis a jour 2006 available at www.droit-afrique.com/.../Burundi/ (accessed 30 March 2014).

⁶⁶ Kabamba B *Interregionalité des pays des Grands Lacs africains. Elaboration d'un modèle d'intégration régionale et son application à la région des Grands Lacs africains* (2000) 46.

2.3.2.2 The Convention's peculiar features

The ECGLC Convention has four main parts. First, the objectives of the organisation are embedded in four articles which deal with its vision and aims. The second part deals with different institutions and their responsibilities within the organisation and the region. In twenty-five articles are laid down the various innovative normative standards which should enhance the rule of law and economically transform the region. The third part provides for budgetary matters which allow the organisation to function. The final part, contains miscellaneous provisions.

Though most of these different provisions make their own contribution to the wellbeing of the people and regional integration ambitions, it appears that three concepts of regional integration emerged from the Convention as peculiar features. These are inter-states co-operation; regional integration by the establishment of common agencies and services; and the establishment of the Arbitration Commission.

2.3.2.2.1 Inter-states co-operation⁶⁷

With regard to the integration of security requirements in a regional integration mechanism, participants came to the conclusion that the region faced serious security challenges with refugees roaming all over the region.⁶⁸ The three States came out of civil wars and were in a transition period where they needed to secure their existence as independent states with the imperium of powers. They realised that no State on its own is able to deal with these security challenges and succeed. Co-operation is the only means and tool through which hope for a better future was still possible. They decided an inter-states judicial, security and economic co-operation as a way of dealing with related issues. As stated in Article 2 (4), the Member States aimed:

‘to co-operate closely in the social, economic, commercial, scientific, cultural, political, military, financial, and technical and tourist fields, and more particularly in legal, customs, public health, energy, and transport and telecommunications matters.’⁶⁹

The Convention outlined an ambitious combination of security, economic and politic capabilities through which put multi-sectorial co-operation should be developed. In addition to the wide range of means put in place, the Convention advocates the implementation of regional agencies and institutions in order to promote co-operation through effective life

⁶⁷ Article 2 (3) of the ECGLC Convention.

⁶⁸ Bwenge M A (2010) 2.

⁶⁹ Article 2 (4) of the ECGLC Convention.

impacting dividends. As Kazadi puts it effectively, ‘the ECGLC was and is effectively an inter-state community’ through its instruments.⁷⁰ The inter-states most important co-operation is consecrated within the judicial convention covering criminal cases in 1975.⁷¹ It establishes criminal extradition procedure between the three Member States of suspects following a lawful request. In 1983, the extradition provisions were extended to civil and commercial matters in two additional Protocols (judiciary assistance and investigation missions). These Protocols provide for partial protection and assistance for the Great Lakes Region’s citizen and their properties.

To understand the ECGLC Convention’s spirit of co-operation requires that the historic context be stated: it intended to establish as a priority a community of security as the sole basis of all development.⁷²

2.3.2.2.2 Common agencies establishment⁷³

The ECGLC Convention established five agencies as means for economic regional integration. They are reaffirmed in Article 3: ‘In order to attain these objectives, the member States solemnly undertake to initiate appropriate action on the problems involved, in particular, through the establishment of common agencies and services, and by the signing of understandings, agreements or conventions.’ In this regard, the Development Bank of the Great Lakes Countries (BDEGL), the Energy Organisation of the Great Lakes Countries (EGL), the Institute for Agriculture and Livestock Research (IRAZ), and the International Great Lakes Energy Company SINELAC were established in order to uphold the Convention’s spirit.⁷⁴

In its first phase, the ECGLC succeeded in establishing these ‘agencies’. Trade and energy enhancements were therefore key benefits of the ECGLC, until its collapse in the democratic era in the Great Lakes Region in the 1990s.

The ‘CEPGL’s re-launch in 2007 was heavily promoted by the international community, trying to build upon the positive outcomes of CEPGL’s first phase and the continuing

⁷⁰ Kazadi-Mpiana J (2013) 231.

⁷¹ Code et lois du Burundi mis a jour 2006 available at www.droit-afrique.com/.../Burundi/ (accessed 30 March 2014).

⁷² Kabamba B (2010) 27.

⁷³ Article 3 of the ECGLC Convention.

⁷⁴ The acronyms BEDGL, EGL, IRAZ and SINELAC stand for agencies’ meanings in French.

cooperation in the energy sector as well as attempting to fix broken ties between the Member States.⁷⁵

These broken ties according to Thompson and al produced several obstacles and divergences between the Member States and resulted as well as reduced institutional capacities to fully engage again the Member States without external help.

It is then right to conclude this part by affirming that, the ECGLC is an intergovernmental institution and its successes or failures are related to member states behaviour and strategies harmonisation.

2.3.2.2.3 The Arbitration Commission

The Convention included provisions for the establishment of the Arbitration Commission as a regional legal tribunal with legal missions within the Great Lakes Region. It is one of the four main institutions of the ECGLC.⁷⁶ Its mission is the most crucial one, and can be briefly stated in the following terms:

- the responsibility to ensure compliance with the law in interpreting and applying the ECGLC Convention;⁷⁷
- It shall be competent to rule on any dispute between the three member States under the Convention⁷⁸ and
- 'its decisions shall have executory and binding force'.⁷⁹

The Convention makes provisions for a separate protocol for the Arbitration Commission statute.⁸⁰

These provisions offer guarantees for inter-state relations and conflict regulation; they harmonise the existing relations among Great Lakes Region States and avoid jurisdictional conflicts. They establish the uniform application of the ECGLC Convention and suggest how to overcome multiple challenges posed by regional integration in regard to national and not community law. Knowingly that such challenge in inter-states relations or state-community relations are unavoidable, so these relations are clearly defined and managed.

⁷⁵ Westerkamp M, Feil M & Thompson A (2008) 36 available at www.initiativeforpeacebuilding.eu (accessed 30 June 2014).

⁷⁶ Art 5 of the ECGLC Convention.

⁷⁷ Art 25 of the ECGLC Convention.

⁷⁸ Art 26 of the ECGLC Convention.

⁷⁹ Art 27 of the ECGLC Convention.

⁸⁰ Art 30 of the ECGLC Convention.

The fact that the ECGLC instruments include many innovative forms of community law, should not give the impression that they were and are perfect documents. They did not mitigate or resist the different political crises in the region but did survive these political and economic storms by hibernating⁸¹.

They contain some imperfections which could be interpreted in a way that could unreasonably restrict regional integration in the Great Lakes Region. Therefore, the next section highlights these imperfections.

2.3.2.3 Imperfections of the Convention

The ECGLC Convention and Protocols should be the anchor of regional integration schemes in the Great Lakes Region. They should be enhancement instruments in addressing developmental challenges in the region by provisions and institutions. However there is still no regional protection of and respect for socio-economic rights and liberties.⁸² These rights are entrenched within democracy and their implementation in the Member States. They should guarantee the rule of law in the region and the establishment of democratic institutions. No effective provision has been made for human rights protection and/or promotion of democracy in the Convention and by institutions or for their use by individuals.

The stages realised by violating or ignoring human rights and democracy is dangerous and lead to destruction and slavery. Bwenge argues in this respect that the ECGLC was an institution unable to adjudicate Member State issues by the fact that it was a club of three Presidents and not of the people.⁸³ He emphasises also the lack in the Convention of a mechanism for prevention and conflict resolution which led to the ECGLC's inability to discharge its mandates.⁸⁴

A further problem is that the Convention does not contain any provision covering gender equality and women's rights. Women constitute an important segment of the Great Lakes Region's population and carry the burden of the families in this most predominantly patriarchal society. They are the principal labour force of the region and deserve particular attention and protection in the regional integration system and its instruments. The omission

⁸¹ Hibernating, from hibernation known as a state of inactivity and metabolic depression in endotherms. In this study, it encompasses a state of inactivity and production of adversely effects as explained by Bwenge explains hibernating in reference to ECGLC initiatives which went bankrupt after years of limited successes, and failures and Kazadi-Mpiana J (2013) 238.

⁸² Kazadi-Mpiana J (2013) 239.

⁸³ Bwenge M A (2010) 4.

⁸⁴ Bwenge M A (2010) 4.

of gender equality and women's rights has a negative effect on the protection of human rights in the Great Lakes Region.

Another problem with the Convention is the lack of implementation. The Arbitration Commission has not as yet been constituted and its mandates remain unfulfilled. Kabamba explains that the structural inadequacy settled in the Great Lakes Region's economic and the socio-political life finds its justification in the gap between theories and practical realities: the laws, institutions and structures of society which are affected hereby.⁸⁵ Most vital institutions are provided for throughout the Convention but their implementation is a mirage.

Kazadi regards the inter-state settings of the ECGLC as a major stumbling block hampering the discharge of its mandates and organisation.⁸⁶ He emphasises on the structural dysfunction of the ECGLC found within its instruments. The Arbitration Commission, as judicial organ of the ECGLC, is supposed to be competent to adjudicate on issues between Member States, with its decisions having immediate effect and binding force, but it is non-existent or non-implemented. The Arbitration Commission is an inter-states institution and not accessible to the population of the Great Lakes Region.⁸⁷ Until 2014, concludes Kazadi, there has been no proof of the implementation and functioning of the Arbitration Commission: it has never been implemented or instituted, he concludes.⁸⁸

The three core Member States were led into negotiating the Economic Community of the Great Lakes Countries (ECGLC) Convention and Protocols for political and economic reasons first, then legal ones. Their negotiations focussed primarily on security issues concerning the regimes, other issues were secondary and not priorities. The political superstructure in the Great Lakes Region was under the leadership of the DRC (Zaire) of President Mobutu. Its motto was 'the politics of open doors', anyone can enter the country or leave it without control or prohibition. Rwandese and Burundians were allowed to enter and work in the DRC without restrictions. The DRC (Zaire) was the 'big brother' offering support and understandings to two brothers who cannot make it on their own.

⁸⁵ Kabamba B (2000) 50.

⁸⁶ Kazadi-Mpiana J (2013) 231.

⁸⁷ Article 18 of the Second Additional Protocol to the ECGLC Convention (1977).

⁸⁸ Kazadi-Mpiana J (2013) 231.

The country enjoyed multi-millions in aid from the ‘American containment political’⁸⁹ dividends. It was considered as treason to DRCs’ political standing to not assist it and other Great Lakes Region States. The same political reasons, with security issues in the background, led to the creation of the International Conference of the Great Lakes Region (ICGLR) and its instruments, but the DRC was shocked by the aggression of Rwanda, Burundi and Uganda which it considered as an abuse of trust. Security, politics, trade, laws and the integrating instruments in the Great Lakes Region are hampered by these political issues.

Before concluding this analysis on ECGLC’s legal instruments, it is necessary to indicate that the ‘ECGLC legal hibernation effects’⁹⁰ has had a negative impact on the institutions and population of the Great Lakes Region. The vacuum left by ECGLC institutions created a contrary effect in form of disintegration: free movement of people, and general peace, both of which were considered a long-term gain for the people of the Great Lakes Region. However, these bolt of question on the different borders between Rwanda, Burundi and DRC and mostly became erratic.

The ICGLR inherited from ‘the ECGLC hibernation’ all these contrary effects and instability created by negative groups disrupting peace in the region. However, the potential Member States had been promised firmly access to additional development funds as incentives, by the International Community.

2.3.3 The Dar-Es-Salaam Declaration

2.3.3.1 Background on the Dar-Es-Salaam Declaration

The idea of establishing another institution with a new instrument is introduced at point 2.3.1 with the re-launch of the ECGLC. For more details, the Mini-thesis recalls the United Nations Security Council (UNSC) Resolutions 1291⁹¹ and 1304⁹² on this respect. The UN and OAU presided over the creation of the secretariat for the Conference in Nairobi,

⁸⁹ Containment was a foreign policy of the United States policy to prevent the spread of communism abroad after World War II. A component of Cold War in President Harry Truman’s administration, this policy was a response to a series of moves by the Soviet Union to enlarge communism influence in Eastern Europe, China, Korea, Africa and Latino-America. Within this policy, certain States played a key role of ‘gendarme of the region’. The DRC (Zaire) was a gendarme in Central Africa and the Great Lakes Region. See also The Containment available at www.press.princeton.edu/chapters/s2_9143 (accessed 30 June 2014).

⁹⁰ See Hibernation and effects at 44.

⁹¹ United Nations’ S/RES/ 1291 (2000) adopted by the Security Council on 24 February 2000 available at www.un.org/docs/scres/2000/sc2000.htm (accessed 30 June 2014).

⁹² United Nations’ S/RES/ 1304 (2000) adopted by the Security Council on 16 June 2000 available at www.worldlii.org/int/other/UNSC/.../20P... (accessed 30 June 2014).

Kenya. Four years later, in 2004, eleven Heads of State and Government were invited to attend the conference in Dar-Es-Salaam, Tanzania. They unanimously adopted the Dar-Es-Salaam Declaration on peace, security, democracy and development in the Great Lakes Region.⁹³

The Dar-Es-Salaam Declaration summarises the political initiative aiming to address the root causes of cyclic conflicts and crises, constraints and challenges to sustainable development in an innovative approach. From this time on, the need for a more robust instrument covering Great Lakes Region issues in detail had to be adopted by the Member States in the coming years, meaning 2006. The Pact on Security, Stability and Development in the Great Lakes Region including the Dar-Es-Salaam Declaration, the Protocols and programs adopted in 2006 form the legal basis of the new regional integration mechanism in the Great Lakes Region. The authorities, the different the groups of experts and the assistance of the Group of Friends (GoFs) ensure the full implementation of ICGLR instruments on a regular basis. On the basis of these provisions, each Member State has put in place a National Coordination Mechanism (NCM) which includes national stakeholders, among which are civil society members, women's associations and youth associations which monitor their domestication nationally.⁹⁴

2.3.3.2 Justifications for the adoption of the Dar-Es-Salaam Declaration.

Scholars are divided on the rationale behind the adoption of the Dar-Es-Salaam Declaration as well as on the establishment of the ICGLR itself as an African International Organisation (AIO). For instance, one can take into account the unfinished war and its effects on the Great Lakes Region's core countries and the multiple challenges created by these realities. The lack of trust, administrative destruction and lawlessness settled in the Great Lakes Region as other setbacks. Taking this position, Mughendi states that 'the research for benefice peace for DRC and all the region through the ICGLR set up do not convince, civil war in Burundi (1993) and Rwanda (1994) and different DRC wars (1996 and 1998) have taken place irrespective of the ECGLC presence.'⁹⁵ The constant reluctance of the DRC government, to regional commitments, described these proposals as having a hidden agenda

⁹³ Declaration on peace, security, democracy and development in the great lakes region adopted on 19-20 November 2004 in Dar-Es-Salaam (Tanzania) available at www.geneva-academy.ch/.../Great-Lakes... (accessed 30 June 2014).

⁹⁴ 'ICGLR Background' available at www.icglr.org/index (accessed 26 June 2014).

⁹⁵ Mughendi N 'Relancer la CEPGL en pleine crise économique? L'enjeu du partage des ressources congolaises' 2009 93 available at www.dounia-risri.net/.../Dounia2_pp_91 (accessed 24 June 2014).

against the country and its raw materials.⁹⁶ And Bwenge insists on the idea of a special fund for the reconstruction of the region.⁹⁷ But these arguments support sense to what the Dar-Es-Salaam Declaration describes in its Preamble as deeply concerning real facts as follows:

‘Deeply concerned about the endemic conflicts and persistent insecurity caused or aggravated by, *inter alia*, economic stagnation and poverty aggravation, mistrust and suspicion between governments, massive violations of human rights and other policies of exclusion and marginalisation, gender inequality, use of violence for conquering and conserving power, impunity of crimes of genocide, crimes against humanity, war crimes, illicit trafficking of small arms and light weapons, proliferation of armed groups, organized crime and illegal exploitation of natural resources; recognising the efforts undertaken at national, regional and international level to resolve these endemic problems’.⁹⁸

They confirm the reality of the challenges to regional integration in the Great Lakes Region and outline the importance of instituting and upholding national and regional instruments, and in reality the creation of a new mechanism of regional integration. Others, like Heyl, regard the Dar-Es-Salaam Declaration and the ICGLR itself as a regional solution to regional problems.⁹⁹ It is in fact a response to the inadequate provisions covering peace, security, democracy and development (regional integration specifically) in the Great Lakes Region provided by the ECGLC instruments which led to massive legal challenges and restricted most of the benefits for Member States. The legal apparatus did not play its role of aggregating interests within society and ending the cycle of destruction and rights violation had long way in the region. The Convention aimed ‘to ensure, first and foremost, the security of the States and their people in such a way that nothing disturbs peace and order along their respective frontiers’¹⁰⁰, but the three core countries were victims of rebellions backed by other Member States in the region without peace in sight. Massive violations of human rights had taken place in the Great Lakes Region but the ECGLC Arbitration Commission had not even been implemented, so there was no regional mechanism to deal with regional legal challenges.

⁹⁶ Bwenge M A (2010) 11.

⁹⁷ Bwenge M A (2010) 14.

⁹⁸ Preamble clause 2 of the Dar-es-Salaam Declaration available at www.repositories.lib.utexas.edu/.../3211 (accessed 30 January 2014).

⁹⁹ Heyl C ‘The International Conference on the Great Lakes Region – An African CSCE?’ 2010 in *KAS International Reports* 88 available at www.kas.de/wl/.../kas_21242-544-2-30 (accessed 10 October 2013).

¹⁰⁰ Article 2 (1) the ECGLC Convention.

The monist Constitutions of Rwanda, Burundi and DRC, the different ECGLC Protocols and the Convention were tested to the maximum by different politico socio economic crises; and the inability of Community law to guarantee peace and stability to the new structure and new regional instrument to ease the suffering of the Great Lakes Region peoples. It appears that, to adopt a radical position on the Great Lakes Region unfolding situation and the institutional crises will lead to a dead end unless revolutionary measures are taken to uphold Community law and harmonise overlapping legal instruments. It is true that many legal hindrances exist in the Great Lakes Region's structures and superstructures, that different populations are trapped by them, and that the whole region seems condemned. For instance, women in the Great Lakes Region are suffering from different kinds of human rights violations, Internally Displaced Persons (IDPs) questions are being avoided, and victims of all kinds of violations are seeking justice, in spite of the fact that different international and regional instruments have been ratified by their governments.

Various instruments¹⁰¹ related to the rule of law in the Great Lakes Region have been adopted, peaking with the ECGLC, but their implementation and enforcement have been major hindrances with regard to establishing an integration environment and the mechanisms which should play a catalytic role in relation to development and improve conditions of living in the region. Politics overshadowed daily legal co-operation and exchange of crime dockets and police clearances as required by regional instruments.

Therefore, it is warranted to assume that the adoption of the ICGLR instruments would appear to be an attempt to address the costly vacuum created by ECGLC legal hibernation and the lack of will to oversee efficiently that these hindrances are tackled.

2.3.3.3 Provisions peculiar to the International Conference for the Great Lakes Region instruments

The Great Lakes Region countries, especially the ECGLC members, are going through a spectrum of crimes and atrocities with many having to deal with rebellions and their consequences in form of regional conflict. The conflict is marked by ever-changing alliances and a splintering of rebel groups, which are partially supported by neighbour countries.¹⁰² Many basic instruments were created to bring the Great Lakes Region's anarchy

¹⁰¹ See for example UN/SC Resolutions 1857 (2008) and 1952 (2010) have legal consequences on individuals and entities. At the regional level, the DRC, and its regional partners are Parties to the Protocol on the Fight against Illegal Exploitation of Natural Resources and, consequently, initiatives introduced under this framework have the capacity to be legally binding. Protocol on Judicial co-operation.

¹⁰² Heyl C (2010) 91.

under control and provisions re-launch regional integration institutions in order to achieve peace.

The most important peculiar provisions are related to the regional integration schemes and legal mechanisms are the following.

2.3.3.3.1 Entering into force

With regard to the Dar-Es-Salaam Declaration entering into force, participants of the conference from different sides came to the conclusion that as in the case of Great Lakes Region wars' challenges, the international community had responded slowly and many lives were lost.¹⁰³ The regional response to different atrocities and consequences should be immediate, without delay.

The Dar-Es-Salaam Declaration and the Pact, Protocols and programs as the main instruments of the ICGLR took into consideration these tasks, particularly for the first instrument. The Dar-Es-Salaam Declaration came into effect after its signature by eleven Heads of state and eight witnesses, among who were the UN General Secretary and the Chairperson of the African Union Commission.¹⁰⁴ It was innovative that it entered into force after its declaration; normally international instruments come into effect after negotiation, then adoption and finally ratification. The simplified procedure has the advantages of speed and political gains by virtue of the fact that it addresses the challenges immediately and has the potential to save lives effectively.

But the formal procedure for agreement was required for the ICGLR Pact with the Protocols and programs as integral parts.¹⁰⁵ According to Rosini,

'By ratifying the Pact, the member States agree to apply all its elements according to the principle of non-selectivity, as the Pact, Protocols and Programmes are complementary and mutually reinforcing (Article 31 (1) of the Pact): in particular, the Programmes of Action

¹⁰³ The Rwandan Genocide and the international community response still hunting decisions makers regionally and internationally.

¹⁰⁴ Bøås M, Lotsberg R & Ndizeye J L 'The International Conference on the Great Lakes Region (ICGLR)—review of Norwegian support to the ICGLR Secretariat' 2009 4 5 available at www.norad.no/en/.../131850 (accessed 30 January 2014). See also The Dar-es-Salaam Declaration on peace, security, democracy and development in the Great Lakes Region/ Clause 82 available at www.repositories.lib.utexas.edu/.../3211 (accessed 30 January 2014).

¹⁰⁵ Kazadi-Mpiana J (2013) 232.

support the implementation of the Protocols, while the Pact provides the legally binding framework of the whole regime.¹⁰⁶

In addition, it is worth mentioning that, the Nairobi Pact and its components (Protocols and Programmes) do not allow reservations or selection within, they are a whole in binding and domestication.

2.3.3.3.2 Gender equality and women's rights

A worldwide endeavor has been made to address the aged plight of women in many respects. Many basic instruments are created in this respect, to cover a range of women's rights. From the Universal Declaration on Human Rights (UDHR) and other related instruments on human rights which integrate promotion and protection of women's rights. These include, the African Charter on Human and Peoples' Rights, and, its Protocol on Women's Rights. These instruments cover women's rights universally and continentally, but, do not contain particularities geographically linked.

Focussing on the Great Lakes Region, an instrument to govern women's rights in the region was crucial taking into account women's role in the development of the region, their rights as human's rights, and their protection. Gender equality and women's rights are provided in the Dar-Es-Salaam Declaration and the Nairobi Pact. For instance, it provides for the adoption by Member States of

'deliberate policies and mechanisms for promoting gender equality at all levels and in all sectors, at the national and regional levels, in accordance with the Millennium Declaration, the UN Security Council Resolution 1325 (2000), the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), the African Charter on Human and Peoples' Rights, the Protocol on the Rights of Women in Africa, the Beijing Platform for Action and the African Union's Declaration on Gender Equality in Africa.'¹⁰⁷

Moreover, there still long way to go with the domestication of these provisions nationally by the fact that, Great Lakes Region's societies are mostly patriarchal. They are predominantly men led and women following. But, the Dar-Es-Salaam Declaration provides regional leaderships in promotion and protection of women's rights.

¹⁰⁶ Rosini M 'Neighbourhood Watch? The African Great Lakes Pact and *ius ad bellum*' (2009) *MaxMax-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht* 932 available at [www. www.zaoerv.de/](http://www.zaoerv.de/) (accessed 30 June 2014).

¹⁰⁷ Dar-es-Salaam Declaration clause 35.

2.3.3.3.3 Combatting Genocide and related crimes

The Dar-Es-Salaam Declaration provides a legal basis for combatting various crimes, especially genocide and other related crimes in the following provisions:

‘Fight genocide in the Great Lakes region and hereby undertake to neutralise, disarm, arrest and transfer to relevant international tribunals the perpetrators of genocide, including the forces that committed genocide in Rwanda in 1994, and any such other forces that may occur in future in accordance with the 1948 Genocide convention and relevant United Nations Security Council resolutions;’¹⁰⁸.

The clause acknowledges the horrific genocide in Rwanda, and the Member States duty to arrest and transfer perpetrators to international jurisdictions. It gives also mandate to Member States to neutralise and disarm perpetrators and allied groups, in accordance with the international instruments in order to quell definitively these crimes and potential ramifications.

The Dar-Es-Salaam Declaration enjoins also the Member States to domesticate regional policies in these terms:

‘Put in place national and regional policies based on democracy and good governance aimed at consolidating the rule of law, building capacity in leadership, ensuring the transparency of electoral processes, strengthening the efficiency of legal and security services, promoting new Information and Communication Technologies (ICT)’;¹⁰⁹

Member States, therefore, are obliged to promote the rule of law and strengthen democracy in the region, and transfer various criminals to competent international jurisdictions. It acknowledges the fact that, Member States domestication of international instruments is a guarantee for successes and effectiveness. It reaffirms also the link between integration and judicial co-operation in order to deter hypocrisy and self-centred politic effects.

2.3.3.3.4 Regional integration linked to judicial co-operation

This peculiar covers the three above described, by the fact that, without the rule of law, provisions are only emotions and reflexes or mirages. The dialectic relation between integration and the rule of law is crucial and determine the success of the later. Integration is based on law and its application. From a treaty, Convention or Declaration, relations between sovereign entities are created and should be legally managed or lead to constant chaos. Only

¹⁰⁸ Dar-es-Salaam Declaration clause 20.

¹⁰⁹ Dar-Es-Salaam Declaration clause 32.

by upholding law provisions can successes be guaranteed. Protecting vulnerable groups among which women's and youth in the Great Lakes Region, for example require broader co-operation. With twelve Member States, co-ordination and co-operation of all is a gage for productive integration. And many initiatives can be undertaken for durable outcomes. The presence of the FDLR and Interahamwes, ADF/NALU, and other negative groups destroyed trust and togetherness in the region as above described (justification for the adoption of the Dar-Es-Salaam Declaration), for durable initiatives in the Great Lakes Region broader co-operation law based should be promoted.

Another aspect requiring cooperation is the legal overlapping created by many instruments and the fact that, the ICGLR twelve Member States belong to competing organisations (as will be detailed in the next chapter) and instruments.

Furthermore, the Dar-Es-Salaam Declaration acknowledges its legal weaknesses from its entering into force, by providing for more robust regional integration instrument. The Nairobi Pact finds its justifications in these terms:

'Give meaning to our shared vision for the Great Lakes Region and, to this end, hold more regular political consultations to consolidate and materialise our cooperation in the form of a Pact on Security, Stability and Development to be adopted at the Second Summit of the International Conference on the Great Lakes Region scheduled for 2005 in Nairobi.'¹¹⁰

By this commitment, Member States took a stance for capitalisation of Dar-Es-Salaam Declaration gains by providing for the Nairobi Pact and its Protocols and programs. They laid down the necessity of materialising their vision and co-operation with projects and establishing regular consultations embodied by a follow-up mechanism. These structures constitute the two last peculiar features which will be analysed using the Nairobi Pact, Protocols and programmes.

2.3.3.3.5 Integrator programmes and Protocols

The idea of integrating the region through programmes for productive integration gains recalls the ECGLR common infrastructures analysed at 2.3.2.2.2, however, with new actors' participation as ICGLR Member States. The innovation here is found in terms of participants to the initiative meaning, twelve Member States at the place of three and their regimes in place. The core countries in the Great Lakes Region have, to certain extent, democratically elected governments as other nine ICGLR Member States. The last argument

¹¹⁰ Dar-Es-Salaam Declaration clause 75.

appears in the composition of the preparatory committee for their setups. In this respect, the Dar-Es-Salaam Declaration provides:

‘Set up a Regional Inter-Ministerial Committee, mandated to prepare selected, concrete, achievable and measurable draft Protocols and programmes of action together with specific short, medium and long-term objectives; the Committee is assisted by the Regional Preparatory Committee, enhanced with representatives of the Civil Society, women, youth and other reputable experts with at least one third of women representatives; the Draft Protocols and Programmes of Action will be submitted to the Second Summit and will form with this Declaration, the Pact on Security, Stability and Development in the Great Lakes Region.’¹¹¹

Through this clause, one can notice the implication of all Great Lakes Region stakeholders in the effort to integrate the region. From this clause again, ten Protocols have been drafted to cover different fields which were left out before:

‘Protocol on the Property Rights of Returning Persons’¹¹²

Protocol on the Prevention and Suppression of Sexual Violence against Women and Children¹¹³

Protocol on the Prevention and Punishment of the Crimes of Genocide, War Crimes and Crimes against humanity¹¹⁴

Protocol on Democracy and Good Governance;¹¹⁵

Protocol on Judicial Cooperation.¹¹⁶

Protocol on Non-Aggression and Mutual Defense in the Great Lakes Region;¹¹⁷

Protocol on Management of Information and Communication¹¹⁸

Protocol against the illegal exploitation of Natural Resources¹¹⁹

Protocol on the Specific Reconstruction Zone.¹²⁰

¹¹¹ Dar-Es-Salaam Declaration clause 76.

¹¹² Article 13 of the Nairobi Pact.

¹¹³ Article 11 of the Nairobi Pact.

¹¹⁴ Article 8 of the Nairobi Pact.

¹¹⁵ Article 6 of the Nairobi Pact.

¹¹⁶ Article 7 of the Nairobi Pact.

¹¹⁷ Article 5 of the Nairobi Pact.

¹¹⁸ Article 14 of the Nairobi Pact.

¹¹⁹ Article 9 of the Nairobi Pact.

¹²⁰ Article 10 of the Nairobi Pact.

Protocol on Property Rights of Returning Persons.¹²¹

These Protocols are very important by the fact that, they embody the region attempts to deal with the question of Great Lakes Region regional integration and regional legal issues in the region in a comprehensive manner. They demonstrate also the regional analysis of the multi-dimensional crisis undergoing in the Great Lakes Region. Politic and economic needs need to be addressed conjointly and not separately.

The complete analysis of the general background calls for the extended analysis of the co-operation established between the ICGLR and the ECGLC, and, the overlapping created by their instruments.

2.3.4 The Great Lakes Region transnational economic development bipartite

The CIRGL and the ECGLC manage and co-ordinate regional integration in the Great Lakes Region. These two integrative organisations have two legal founding instruments which give them mandates to pursue regional integration of the region following the terms of their provisions. Operating in the same area or region, the three Member States of ECGLC are also Member States of the ICGLR as explained in Chapter one, point 2 or the problem statement of this Mini-thesis. They are in a confuse partnership by the fact that the terms of their partnership are not clear even after it signing.

The ICGLR and ECGLC partnership accord was signed in March 2010 after the implementation of project 3.2.1.¹²² The project 3.2.1 stands for the ECGLC revival through common infrastructure built when it was in its apogee. It (the partnership) was established with the mission of transnational economic development.

The transnational economic development include nowadays two important projects: project 3.2.1 and project Southern Corridor (Great Lakes Region Railway) Project as project 3.3.4. The two projects are the main contents of the bipartite between the ICGLR and ECGLC known for the moment.

Taking into account the Great Lakes region challenges, many projects in transnational economic development will soon consolidate the bipartite. The different projects undertaken by the ICGLR and ECGLC analysis will follow in the next sections, and end up by legal implications.

¹²¹ Article 13 of the Nairobi Pact.

¹²² Heyl C (2010) 25.

2.3.4.1 Project 3.2.1

This project was signed in June 2006 and revised in August 2006 by the ICGLR Member States exclusively, without engaging the ECGLC as a REC partner.¹²³ The ECGLC, its instruments and administrative institutions were paralysed by distrust and animosity created by wars and bankruptcy. The project main aim was the revival of the ECGLC as a Great Lakes Region REC and revives its common infrastructures in order to systemise political dialogue and re-launch regional integration.¹²⁴

The point is that, the ICGLR leaders attributed to Great Lakes region crises economic and politic dimensions. The economic dimension covers the lack of the implementation of economic protocols and poverty reduction, among which the Protocol on trade and the politic dimension covers the instability created by wars and miscommunication.

2.3.4.2 Project 3.3.4

The Great Lakes region as a whole is composed by a majority of landlocked Member States.¹²⁵ Trade and related activities are challenging within the region by lack of sound infrastructure of communication. The costs of different commercial activities divert intra-regional trade and condemn the population to live in poverty. In this respect,

‘The proposed Southern Corridor (Great Lakes Region Railway Project) (Ref 3.1.4) responds to the Dar-Es-Salaam Declaration, which foresaw the development of infrastructure in the Great Lakes Region as a vital ingredient in creating space for economic development, peace and stability. Improved infrastructure especially transportation will facilitate movement of both goods and people, and thus encourage increased trade within and outside the region.’¹²⁶

Recalling the Dar-Es-Salaam Declaration terms, the ICGLR leaders elaborated this project without the ECGLC participation as a REC or a partner; the project was signed in March 2006 and amended in August 2006.¹²⁷ They assumed the ECGLC accord by the fact that its three Member States are also implicated in the ICGLR. Moreover, the ECGLC was to be revived later on the ICGLR project 3.2.1 terms and GoFs support.

¹²³ IGLR Project 3.2.1 (2006) 2.

¹²⁴ ICGLR Project 3.2.1 (2006) 5, 6. Common infrastructures are also known as ‘specialised agencies’.

¹²⁵ Rwanda, Burundi, Zambia, South Soudan, Central African Republic, and Uganda are landlocked; with DRC almost landlocked. They have poor infrastructure of communication.

¹²⁶ Preamble to the ICGLR project 3.3.4 (2006) 2.

¹²⁷ ICGLR Project 3.3.4 (2006) available at www.icglr.org (accessed 30 June 2014).

The project entails interlinking the lakes with a railway system, and connecting the same with both the Southern Africa and Eastern Africa railway systems.¹²⁸ By this fact, this project would like to be centred on the objective of reducing and eventually eradicating poverty consistent by becoming an affordable alternative means of communication, leading to intra-regional trade growth and sustainable development. It emphasises the promotion of 'trade, flow of goods and other economic activities among the regions of; the Great Lakes, Eastern, Central and Southern Africa, the Governments of Burundi, Democratic Republic of Congo (DRC), Rwanda and Uganda and Zambia, have since 2000, been considering development of alternative transport system to further interconnect these regions.'¹²⁹

2.3.4.3 The Great Lakes Region transnational economic development consequences

The ICGLR and the ECGLC bipartite appear in the Great Lakes Region by ignoring the legal dimension of the agreement. By itself or common knowledge, the bipartite is a contract as such, is negotiated by competent parties sets forth an exchange of what each party will or will not do. Competent parties on contract set terms, contents and object of the contract.

The ICGLR elaborated its projects independently and on its own terms. It established the need for southern corridor railways in order to increase trade and communications. The Southern Corridor railways and the revival of the ECGLC through its common infrastructures or agencies are part of the infrastructures development in the Great Lakes Region. The ICGLR considered the ECGLC as an executant of its regional integration programmes. Heyl emphasises in this respect that 're-forming the CEPGL was one of the ICGLR projects in the program of action for economic development and regional integration.'¹³⁰ And it did not negotiate with a partner.

In other dimensions, the ECGLC and the ICGLR are considered in competition on the Great Lakes Region integration. Great Lakes Region donors consider the ECGLC as alternative to the ICGLR. For example, the EU assistance is preferably given to the ECGLC than to the ICGLR. The EU Commission donated 50 million euros to develop the CEPGL Conference Secretariat and assist infrastructure projects, and it stands in sharp contrast to the outcome of

¹²⁸ ICGLR Project 3.3.4 (2006) 2.

¹²⁹ ICGLR Project 3.3.4 (2006) 3.

¹³⁰ Heyl C (2010) 102.

the ICGLR donor round table conference.¹³¹ Rivalry is also due to the fact that the ICGLR handed over to the ECGLC, its programmes and mechanisms for regional integration. The complementarity is established on this effect irrespective of donors' disapprobation and the non-ante participation of the ECGLC. Moreover, it produced another overlapping of integration's instruments.

Trujillo discussed overlapping in trade and their effects from public or private right of actions.¹³² She establishes the differences between vertical overlapping and horizontal overlapping in trade instruments. She describes vertical overlapping in trade law instruments, as where specific trade issues at the regional level converge with those at the international.¹³³ She explains vertical overlapping as illustrated in issues of state to state dispute in which one of the parties or both transfer their issue to international body like the WTO. She describes the contrary to horizontal overlapping consisting of government-to-government trade disputes (public rights of action) that may evolve into private rights of actions for foreign investors.¹³⁴ These kinds of overlapping are not exhaustive by the fact that another kind of overlap, the vertical/horizontal overlaps may occur simultaneously, particularly when dealing with certain international substantive law issues that implicate domestic regulatory fiscal or non-fiscal measures.

Vertical/horizontal or, vertical and horizontal overlapping's require the establishment of appropriate body to manage and adjudicate them within the community. And Great Lakes Region integrative frameworks are conditioned by these overlapping's, capacities building in the region still needed crucially. The Dar-Es-Salaam Declaration, the Nairobi Pact and related instruments plus the ECGLC Convention, protocols and programmes create multiple overlapping described by Trujillo, above. Institutions for mitigating potential issues generated by these instruments, which create legal pluralism and overlapping are not established.

2.4 Conclusion

Throughout the above discussion, both the ECGLC and the ICGLR instruments related to regional integration play, a very important role but do not resolve crucial legal issues, for instance, setting up regional judicial institutions and reaffirming their independent

¹³¹ Heyl C (2010) 102.

¹³² Trujillo E 'From Here to Beijing: Public/Private Overlaps in Trade and Their Effects on U.S. Law' 2009 *Loyola University Chicago Law Journal* 707 available at www.lawcommons.luc.edu/luclj/vol40/iss3/9 (accessed 30 June 2014).

¹³³ Trujillo E (2009) 708.

¹³⁴ Trujillo E (2009) 709.

status and role to deal with regional integration issues. To do so by sound related instruments would be an integration effective response. There are also the legal impediments that are caused by overlapping regional integration instruments which require harmonisation in order to fully integrate the region and efficiently tackle its challenges. By becoming a means of mitigating current and future conflicts, they can be used in legal and policy reform process as a catalyst for public participation.

It is also relevant to conclude that, the AU took on a leading role in the establishment of the ICGLR through the actions of its different special missions in the Great Lake Region. The ICGLR is not, however, one of the eight regional organisations recognised by the AU. The ICGLR is thereby not included in AU consultation proceedings and cannot use the AU's forum to voice ICGLR interests. What is true for the ICGLR is also for the ECGLC in virtue of space and temporal zone. The AEC did not bring about new standards for regional integration, but did attach African specificities which are related to the needs of the continent and its population. These needs require engagement and assumption of responsibilities by all African stakeholders and partners in order to achieve the integration of the continent.

The next challenge is on the use of regional bodies in order to deal with 'rule of law politics' which entrench state monopoly and sovereignty. As the main focus of this dissertation is to analyse legal impediments to regional integration in the Great Lakes Region, the next chapter will provide a detailed discussion in this regard.

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CHAPTER THREE

REGIONAL INTEGRATION LEGAL FRAMEWORK

3.1 Introduction

This chapter gives an overview of the international legal framework for regional integration in order to comprehend the Great Lakes Region framework. In this respect, it analyses the General Agreement on Tariffs and Trade (GATT) specially Article XXIV first. Secondly, it analyses the continental integration framework through the Abuja Treaty. Thirdly, it will analyse the Great Lakes Region integration framework and different actors' responsibilities.

This will enable the identification of legal obstacles and an evaluation of their impact on regional integration process.

3.2 International integration legal framework: General Agreement on Tariffs and Trade/World Trade Organisation Agreement.¹³⁵

Regional integration in its different forms is very old but its actual forms and elements have a many elements from the General Agreements on Tariffs and Trade/World Trade Organisation (GATT/WTO) law especially article XXIV. In order to fully comprehend its contents, an analysis of its terms is important. Hilpold conducted an exhaustive analysis of Article XXIV and its contents.¹³⁶ This study summarises some of his analysis in order to identify international standards according to the GATT/WTO requirements. Although the standards aimed in this study are not exhaustive, they do, however, constitute the key foundations from which regional integration and related policies and recommendations developed.

The Most Favoured Nation (MFN) principle of Article of the GATT provides that 'any advantage, favour, privilege or immunity granted by any contracting party to any product originating from other contracting parties shall be extended to like products originating from other contracting parties.'¹³⁷ However, an exception thereto is guaranteed by

¹³⁵ GATT/WTO General Agreement on Tariffs and Trade/ World Trade Organisation. The GATT was signed in 1947, took effect in 1948, and lasted until 1994; it was replaced by the World Trade Organisation in 1995. It is a multilateral agreement regulating international trade. Its purpose are the substantial reduction of tariffs and other trade barriers and the elimination of preferences, on a reciprocal and mutually advantageous basis.

¹³⁶ Hilpold P 'Regional integration according to Article XXIV GATT- between law and politics' in (2003) 7 *Max Plank Yearbook of United Nations Law* 219-60.

¹³⁷ Article 1 (1) of the GATT.

Article XXIV which covers regional integration. The MFN principle creates and provides for multilateralism benefits of bilateralism.¹³⁸ Article XXIV outlines the conditions under which multilateralism is stopped from operating and expanding bilateral benefits accorded. The advantages sets in Article XXIV for regional integration are very important, they range from market regulation; positive effects on trade, equilibrium between all interests, common external tariffs and dispute settlement will now be examined.

3.2.1 Market regulation

Market regulation brings multiple gains to regional integration. It establishes internal market and common market regulations.¹³⁹ However, the margin between a common market and internal market seems slight. As argued by Hilpold, it does not appear possible to draw a clear line between these two concepts since both are broadly identical in content.¹⁴⁰ Analysing the content of market regulation is very important for understanding regional integration.

It is built on establishing an internal market in which abolishes between Members States the different obstacles to the free movement of persons, goods, services and capitals. It strives, further, to establish fair competition rules in the internal market as well as a sound common commercial policy. These three pillars of a regional market increase its bargaining power in the international community. The removal of tariffs is not sufficient to achieve a 'single market' area by the fact that despite the removal of tariffs, it seems then that firms have always retained an ability to segment markets, that is to price discriminate between different countries, and thereby retain dominant positions in their domestic markets.¹⁴¹

The need for policy measures regulating the market appear to be one off the ways of tampering the market segmentation and promote viable integration in the region. Further Baldwin and Venables suggest the exploration of the distinction between segmented and integrated markets by investigating different representations of the game between firms. Comparison of trade and welfare levels in a variety of games provides a way of assessing the costs and benefits of more or less 'integrated' outcomes, and in the first part of this section we

¹³⁸ Hallberg D *A Legal and Political View on Regional Trade Agreements in the GATT/WTO - GATT Article XXIV* (Unpublished Master Thesis, Göteborg University 2007/2008) 32.

¹³⁹ Article III of the GATT/WTO which provides for internal market among regional Integration member states.

¹⁴⁰ Hilpold H *Regional Integration According to article XXIV GATT- Between Law and Politics' Max Plank Yearbook of the United Nations Law* (2003) 228.

¹⁴¹ Baldwin E R & Venables J A 'Regional economic integration' (2004) 11 available at www.graduateinstitute.ch/.../Baldwin/ (accessed 30 June 2014).

make such comparisons, and illustrate how different games support different volumes of trade and levels of welfare.¹⁴²

3.2.2 Positive effects on trade

The general function attributed to Regional Trade Agreements (RTAs) is 'to facilitate trade between the constituent territories and not to raise barriers to trade of other contracting parties with such territories'.¹⁴³ According to some scholars among whom Viner,¹⁴⁴ the regional integration trade creating effects of such initiatives should prevail over the trade diverting effects. Viner states that the benefits of regional integration cannot be accumulated if the trade diversion in the region is greater than trade creation.¹⁴⁵ He demonstrates that if trade creation is the benefits will be less or the agreements will bring negative results instead of expected gains.

However, the main motive on which regional integration is based appears to be the agreement's gains as a result by positive trade. Critics argue that 'free trade is all right so long as benefits are distributed equitably or provided exchange is fair' and others say free trade is good, but more so in theory than in practice, or that it could be good but does not exist in reality because countries 'cheat' too much (by using a variety of hidden protection devices).¹⁴⁶ However, it would be hazardous to consider regional integration and multilateral agreements and related requirements as incompatible. They are complementary in assuring equilibrium among different interests brought together for mutual benefit and not mutual destruction.

Regionalism should be seen as a process contributing towards the progressive unification of the world economy or leading to multilateralism at the end of the process by securing equilibrium between the Member states involved and those remaining outside of the integration agreement.¹⁴⁷ An analysis of that equilibrium in the Customs Union (CU) and Free Trade Area (FTA) will follow as an illustration.

¹⁴² Baldwin E R & Venables J A (2004)

¹⁴³ Article XXIV para 4 of the GATT/WTO 1994.

¹⁴⁴ See in Snorrason ST 'Asymmetric Economic Integration, Contributions to Economics' 2012 13-5 available at www.springer.com/.../9783790828603-c (accessed on 01 January 2014).

¹⁴⁵ Viner J *The customs Union issues* (1950) 10-3.

¹⁴⁶ Dunckley G *Free trade / Myth, reality and alternatives* (2004) 9.

¹⁴⁷ Hallberg D (2007/2008) 32-4.

3.2.3 Equilibrium between all ‘constituents interests’ and ‘non-constituent interests’ in the Customs Union and the Free Trade Area

Paragraphs 5 and 8 of Article XXIV indicate how the prevailing of trade creation effects over trade diversion ones can be achieved by a FTA and CU. Paragraph 5 of Article XXIV aims for the protection of the interests of members of the WTO who remain outside of these arrangements. It provides for the duties and other regulations of trade implemented after the formation of a FTA/CU to remain as they were before the agreement.

The assessment of CU applied tariffs for example, is relevant in order to understand the interpretation of article XXIV. The deepening or/and consolidation of any regional integration process requires the harmonisation of policies among the governments of the member countries and aligning them on international standards including those set by the GATT/WTO. Without this multidimensional convergence (fiscal, monetary, and exchange policies) any integrationist process within the CU or FTA could only end with destructive effects on Member States and regionalism. For instance, if the lack of co-ordination exists in community law matters, then detrimental and irreparable damage to citizen daily life could cause important disturbances, and result in opposing one partner to others.

One example of such policy co-ordination within regional integration is the adoption of common external tariffs applied to goods from non-member states. An analysis of common external tariffs which constitute the next standard of regional integration will follow in the next point.

3.2.4 Common external tariffs

Paragraph 8 of Article XXIV provides for the conditions under which a regional integration area can be created. These conditions cover substantially all trade between Member States and non-member States by establishing common external tariffs. The common external tariffs consist of the application of ‘substantially the same duties and other regulations of commerce’ to trade with countries remaining outside of the CU.¹⁴⁸ Krishna remarks that ‘on external tariffs, the original GATT requirements was that external barriers not be more restrictive than initially.’¹⁴⁹ He cautions by recalling ‘the 1994 Understanding on the Interpretation’ of Article XXIV issued by the GATT (see Appendix 2.1) provided substantial clarity on the issue of measurement and choice of the external tariff - indicating

¹⁴⁸ Article XXIV paragraph 8 of the GATT/WTO.

¹⁴⁹ Krishna P *Trade blocs: economics politics and politics* (2005) 58.

that the GATT secretariat would compute weighted average tariff rates and duties collected in accordance with the methodology used in the assessment of tariff offers in the Uruguay Round of the trade negotiations and examine trade flow and other data to arrive at suitable measures of non-tariff barriers'.¹⁵⁰ These considerations offer some relieves to regional integration policymakers. The pressure of opposed groups outside the CU on Member States who would like revert to the arbitrary protectionist tariffs and non-tariffs barriers is deemed unnecessary.

The present international trade conditions make it rather difficult to return to the traditional protectionist regimes of the past centuries by virtue of the fact that tariffs and non-tariff barriers are easy to identify and challenging to justify. There is a latent danger in increasing arbitrary tariff barriers and non-tariff barriers for protectionist purposes since they divert trade and reduce trade gains. The destructive danger resides in unfair trade practices, such as, subsidies, dumping or protectionist tariffs, which lead to unnecessary pressures from different partners. Evidence exists of protectionist trends and setups developed by the developed countries, who abused and tested traditional mechanisms against unfair trade practices related to import competition, subsidies, and dumping.¹⁵¹ However, an extension of this situation is revealed in allegations of unfair practices in exports and in new areas, such as, distribution systems, saving rates, and workers' rights, brought to the GATT/WTO dispute settlement mechanism.¹⁵²

The major problem today is that any policy could be alleged to be a source of unfair trade practices since practically any policy (or its absence) affects trade; hence the need for a dispute settlement mechanism in regional integration is crucial.

3.2.5 The Dispute Settlement Understanding

If rules for promoting fair trading are to be effective, the need for them to be accompanied by provisions for settling disputes is crucial. It is only through such provisions that self-serving interpretations can be exposed and unilateral egocentric effects tamed. Consideration had to be given to effective development within the GATT/WTO institutions and law of a more consensual procedure for dealing with trade disputes. The Dispute Settlement Understanding (DSU) plays a vital role in discouraging negative behaviour linked to sovereignty and the undermining subsidiarity principle. However, after the 1994

¹⁵⁰ Krishna P (2005) 59-60.

¹⁵¹ Hilpold P (2003) 7 221-2.

¹⁵² Merills J G *International Dispute Settlement*, 4ed (2005) 211-5.

Agreement,¹⁵³ which dealt with the weaknesses of the old DSU mechanism and introduced innovations, the new DSU was developed in various ways and firmly established a well settled practice which has to deal with the challenges of today trade. Some of current challenges to trade did not exist at the inception of the GATT Agreements but are the result of technology and the capacity of regional integration in regulating markets.

Considering the wide application of Article XXIV of the GATT geographically, the next point explores the continental integration framework entrenched within the Abuja treaty which establishes African continent specificities in integration.

3.3 Continental integration legal framework

Africa, regionally, has set integration parameters for the continent and its countries in relation to tackling integration challenges and reducing poverty. These parameters are contained in the Abuja Treaty.¹⁵⁴ This Treaty establishes the Africa Economic Community (AEC)¹⁵⁵ which marks the starting point for Africa is concerted efforts towards integration. African leaders recognised at its signing, that there are multiple obstacles to the development of the continent. They drew lessons from the African Union Organisation's (AUO) Kinshasa (DRC) meeting's recommendations¹⁵⁶ calling for the establishment of the AEC, and the signatories to the Abuja Treaty also took into account the recommendations of the 1980s Lagos Plan of Action for integrating the continent.

The Abuja Treaty creating the AEC divides the African continent into 8 regions.¹⁵⁷ It establishes six stages leading to the AEC, between 2023 and 2027. The first stage is strengthening existing (RECs) or establishing them where they do not exist; the second, establishing a CU; the third, realising a Free Trade Area in each REC; the fourth, establishment of a Africa Customs Union(ACU) with common external tariffs; the fifth, the establishment of the African Common Market (ACM) with the adoption of multi-sectorial common policies and harmonisation of financial, fiscal and monetary policies; and the final

¹⁵³ Ostrihansky R 'New developments in the GATT dispute settlement procedures' (1990) 24 (2) *Journal of World Trade* 67.

¹⁵⁴ The Abuja Treaty was signed in June 1991 in Abuja, Nigeria, by the Africa Union's Members. They strived for the development of the continent through grouping countries regionally.

¹⁵⁵ The AEC was established in 1991 based on the final Act of Lagos and the Treaty commonly known as the Abuja Treaty. See 'AEC: History and present status' available at www.dfa.gov.za/foreign/multilateral/africa.aec.htm (accessed on 30 January 2014).

¹⁵⁶ The OAU meeting in Kinshasa (DRC) in 1967 laid down several recommendations on 'intra-African co-operation', Resolution on industrialisation, Resolution on regional economic groupings, Resolution on an all-African trade fair, etc available at www.biblioteca.clasco.edu.ar/.../oau/oCoM (accessed 30 June 2014).

¹⁵⁷ Article 1 (d) of the Abuja Treaty.

stage, the establishment of the AEC structures and implementations.¹⁵⁸ These stages are an expression of the 'linear model' of integration found essentially in African integration models, with integration of capital markets, goods, and labour, as well as monetary and fiscal integration, with legal and enforcement backing.

Implementing regional integration as required by the AU through its Abuja Treaty, requires broader actors' responsibilities. Actors have to engage totally in upholding instruments' instructions. They are laid down as policies and instructions to be followed and executed. These regional integration policies' needs require engagement and assumption of responsibilities by all stakeholders and partners in order to achieve the integration.

3.4 Responsibilities and obligations of Parties under multilateral and regional instruments

The obligations imposed on Member States by the GATT/WTO regional integration law are at three levels: primary, secondary and tertiary. At the primary level, the Member States have internal requirements among which those related to CU, Free Trade Area and Interim Agreements leading to a CU or a Free Trade Area as recognised by Article XXIV of the GATT/WTO. These entities are qualified as exceptions to the MFN provisions. They form a set of requirements which oblige Member States to effect the elimination of duties and other restrictive regulations of commerce with respect to substantially all the trade.¹⁵⁹

At the secondary level, Members States have external requirements, among which are those related to Non-Contracting Parties' interests. They have an obligation not to raise duties or render any other regulations of commerce more restrictive than prior to the formation of the CU and the Free Trade Agreements. For a CU, GATT/WTO law requires the creation of a common external trade regime, i.e., a common external tariff policy. Furthermore a common external trade regime presupposes the creation of a common internal trade regime.¹⁶⁰

At the tertiary level, Contracting Parties have dispute settlement requirements to abide by. In this respect, consultation was first established, as a mode of settling disputes: 'Each contracting party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as may be made by another contracting party with respect to any matter affecting the operation of this Agreement'¹⁶¹ and

¹⁵⁸ Article 6 of the Abuja Treaty.

¹⁵⁹ Article XXIV para 8(a) (i) CU, and 8(b) Free Trade Agreements.

¹⁶⁰ Article XXIV Paragraph 5(a) and 8(a) (ii) CU, and 5(b) Free Trade Agreements.

¹⁶¹ Article XXII (1) of the GATT/WTO.

‘The Contracting Parties may, at the request of a contracting party, consult with any contracting party or parties in respect of any matter for which it has not been possible to find a satisfactory solution through consultation under paragraph 1’.¹⁶² These requirements were instituted in order to promote the effectiveness of fair trading, combat self-serving interpretations, and, finally, discourage unilateralism.

The African Economic Treaty, or Abuja Treaty adheres to the GATT/WTO standards of regional integration but Africanises them by taking into account socio-political elements. Since regional integration requires adaptation to socio-political and cultural specificities, model transposition is impossible and successes not guaranteed. The need to regionalise this universal requirement is a guarantee of its success.

After this overview of the international legal framework for regional integration, the next stage is an overview of the Great Lakes Region’s regional integration framework, and, evaluation thereof.

3.5 Great Lakes Region integration framework

The Great Lakes Region countries have the Economic Community of Great Lakes Country (ECGLC) and the International Conference for the Great Lakes Region (ICGLR) in place as the main integrating organisations operating in the region. These organisations have legal frameworks coordinating efforts for regional integration. They stepped up their efforts by entering into a bipartite agreement in 2010.

The agreed bipartite has multiple objectives including, implementing a common infrastructures revival program; regulating security tensions; building communication infrastructures in the region to achieve regional integration; and alleviation of poverty in the region. In order to realise these goals, these organisations adopted resolutions for their implementation in order to complete Member States integration. The resolutions appear in form of principles and standards.

3.5.1 The integration standards of the Economic Community of the Great Lakes Countries

The Great Lakes Region’s integration standards established by the ECGLC Convention are four as explained in chapter 2, on ECGLC background discussions.¹⁶³ The four regional integration standards are: first, the security of the States and their people;

¹⁶² Article XXII (2) of the GATT/WTO.

¹⁶³ Article 2 ss 1,2,3,4 of the ECGLC Convention.

secondly, the promotion of trade by production, thirdly freeing the movement of persons and goods in the region; and lastly, multi-dimensional close co-operation between all the Member States. The Convention establishes the building of common infrastructures as a major integrator factor in the region. By their production and people of the region's labour rapprochement, political actors will be obliged to compromise and sign the regional integration understandings, agreements or conventions.¹⁶⁴ Efforts have to be made in order to use these infrastructures for everlasting peace and development in the region.

Multi-sectorial co-operation between Member States is provided for as a second integrator factor since co-operation is corollary of production. The executory and binding decisions, interpretive prerogative, and exclusive jurisdictional capacity of the Arbitrage Commission are considered to be non-crucial.¹⁶⁵ However, on the basis of its interpretive autonomy, the ECGLC Convention prevents other external institutions and capacities from interfering with its capacity to manage relational issues within. The ECGLC acquires juridical personality from the Convention. In this respect it can:

- (a) Contract;
- (b) Acquire and dispose of movable and immovable property essential for the attainment of its objectives;
- (c) Borrow;
- (d) Institute legal proceedings; and
- (é) Accept donations, legacies and gifts.¹⁶⁶

These capacities reaffirm the autonomy of the ECGLC and its legal responsibilities. Immunities and privileges to be granted to its staff members had to be determined by the Conference of Heads of States as provided by the Convention.¹⁶⁷

The ECGLC main instrument opens accession to other countries from the Great Lakes region without delimiting the region. It states that 'This Convention may be acceded to by other States in the Great Lakes region'¹⁶⁸.

¹⁶⁴ Article 3 of the ECGLC Convention.

¹⁶⁵ Articles 27 & 29 of the ECGLC Convention.

¹⁶⁶ Article 33 of the ECGLC Convention.

¹⁶⁷ Article 34 of the ECGLC Convention.

¹⁶⁸ Article 36 of the ECGLC Convention.

Having identified integration standards established by the ECGLC through its Convention, the next point will be an analysis of the integration standards established by the ICGLR.

3.5.2 The International Conference of the Great Lakes Region integration standards

Within eighteen points, the Dar-Es-Salaam Declaration provides for regional integration principles in the Great Lakes Region.¹⁶⁹ It establishes principles for regional integration which will then be more efficiently given effect to in the Pact on Security, Stability and Development in the Great Lakes Region. The Declaration, the Pact and the Protocols form one instrument determining a variety of capacities and fundamental principles. In this respect, the Pact provides that:

- '1. The Dar-Es-Salaam Declaration, the Protocols, the Programmes of Action, the Regional Follow-up Mechanism, and the Fund, shall constitute integral parts of this Pact;
2. All references to the Pact shall necessarily refer to all the integral parts of this Pact.'¹⁷⁰

The will to unify the integration instruments in order to be efficient in the implementation tackling challenges find a starting point here, but the harmonisation of these instruments is challenged by their overlapping and the application consequences of regional unresolved challenges.¹⁷¹

The Nairobi Pact establishes the 'implementation of transborder development basins' and a 'Special Reconstruction and Development Fund' as regional integration catalysts. In this respect, the Nairobi Pact stresses:

'The Member States agree, in accordance with the Protocol on the Specific Reconstruction and Development Zone, to implement, an economic development and local regional integration process, pursuant to the decision contained in the Dar-Es-Salaam Declaration to declare the Great Lakes Region as a Specific Reconstruction and Development Zone, and for this purpose, to institute in particular:

- a) Transborder development basins to promote local regional integration of the border populations;

¹⁶⁹ Clauses 37 – 55 of the Dar-Es-Salaam Declaration.

¹⁷⁰ Article 3 of the ICGLR Pact.

¹⁷¹ See Westerkamp M, Feil M & Thompson A 'Regional Cooperation in the Great Lakes Region'. They found that all Great Lakes states are members of various Regional Initiatives and Institutions (RIIs), some of them with conflicting agendas and projects.²² Overlapping memberships in RIIs pursuing similar objectives is costly and can drain capacities from other areas of government' available at www.initiativeforpeacebuilding.eu

b) A Special Reconstruction and Development Fund for the purpose of supporting the implementation of the Protocols and Programmes of Action selected in the priority areas of peace and security, democracy and good governance, economic development and regional integration, and humanitarian, social and environmental issues.¹⁷²

The 'transborder development basins' and the 'Special Reconstruction and Development Fund' were set as elements for Great Lakes Region Countries regional integration. These elements should be centres from which spill over gains will flow in the region and across Member States borders. These are the ICGLR's principles and integrating factors in the Great Lakes Region.

However, the real plan containing regional integration requirements and regional efforts is found in 'The Programme of Action for Economic Development and Regional Integration'.¹⁷³ The Programme stresses that, the ICGLR Member States undertake to jointly promote an integration values as prosperous, integrated economic space, to improve the standard of living of their populations. They took responsibilities to contribute to the development of their region, by implementing the Programme of Action for Economic Development and Regional Integration with the aims resumed as:

- a) Promoting cooperation and economic integration by harmonizing and coordinating national and regional policies with relevant regional economic communities so as to improve stability and economic competitiveness, and to reduce poverty;
- b) Developing common infrastructure in the areas of energy, transport and communications;
- c) Promoting local regional integration by strengthening multi-sectorial co-operation and solidarity among the border populations of neighbouring States.

Through that programme regional standards appear to be focussing on the populations in the region and their daily living. Alleviating poverty by improving the standard of living of the populations, development of the region and finally implementing the Programme constituted the four key elements established as standards at this stage. The key elements will be actioned through

- a) Co-ordination of national and regional policies with relevant regional economic ones;
- b) Development of common infrastructures;

¹⁷² Article 10 of the ICGLR Pact.

¹⁷³ Article 19 of the ICGLR Pact.

- c) Transborder development basins to promote local regional integration of the border populations;¹⁷⁴
- d) The Special Fund for Reconstruction and Development for financing Specific Reconstruction and Development Zone.¹⁷⁵

The Nairobi Pact established these four key standards within the requirements which are meant to regionally integrate the economics of core countries and other Member States by means of the Great Lakes Region integrating instruments. It provides for the unification of instruments (instruments and policies harmonisation) in order to tackle the formal challenges, but fails to tackle the legal challenges resulting from overlapping and legal pluralism which are undermining all efforts to provide sustainable projects.¹⁷⁶ This issue will be considered next.

3.6 Legal obstacles to regional integration in the Great Lakes Region

The Great Lakes Region's integration instruments, the ECGLC Convention (with related instruments) and the Nairobi Pact (with related Protocols and programmes) encounter many obstacles which are playing a negative role by hindering efforts for trading and justice and poverty alleviation programs. Such obstacles may be rooted in the mechanisms for integration and/or the integration instruments. They can be seen when analysing the Great Lakes Region integration instruments' management of community issues, applicability and enforceability.

Concerns have been levelled against the slow implementation pace of the agreed instruments and frameworks in the Great Lakes Region which affect the daily living conditions in Member States and of their citizens. However, agreed instruments cannot be fully appreciated or implemented in isolation from Member States' national laws. Six obstacles appear to be major stumbling blocks to regional integration in the Great Lakes Region. They range from applicability, enforceability, overlapping instruments and consequences, trade law hindrances, effects and security obstacles.

¹⁷⁴ Article 10 (a) of the ICGLR Pact.

¹⁷⁵ Article 21 of the ICGLR Pact.

¹⁷⁶ See FEWER-Africa in 'Legal pluralism and post-conflict state reconstruction in the Great Lakes Region of Africa' (2005) 1-5 United States Institute for Peace available at [www.fewer-international.org/...](http://www.fewer-international.org/) (accessed 30 June 2014).

3.6.1 Applicability obstacles

International instruments oblige parties there to perform them in good faith.¹⁷⁷ But, in the absence of any provision to that effect, Member States have no obligation that the instruments should be incorporated to their domestic law. The three ECGLC Member States are monist and their constitutions provide for direct applicability of international instruments. Therefore, the ECGLC and the ICGLR instruments should be directly part of the national legal systems without intervening national measures which aim at transforming them into national laws.

The Convention¹⁷⁸ and Pact¹⁷⁹ were received separately in Member States' domestic laws since the ICGLR Member States are monists and dualists. They followed the related procedures independently. The obstacles occurred with the implementation challenges at regional and national levels. Implementation can be partial, or incomplete or simply delayed.

The ECGLC Arbitration Commission has not as yet been implemented, almost 40 years after the Convention entered into force.¹⁸⁰ The ECGLC Trade Protocol has been negotiated but neither ratified nor implemented. The judicial convention and protocol ratified are recalled into questions by those who ratified them.¹⁸¹ The DRC's reluctance at the ECGLC re-launch marked another setback to the applicability of the regional instruments.

3.6.2 Enforceability obstacles

Enforceability of international instruments by parties recalls the problem of the challenging equilibrium between law and justice, and how to make community laws legally binding and enforceable within national legal systems. The best laws cannot yield benefits for society if they are not applied to establish justice in accordance with the legal means provided. Enforceability of community law in the Great Lakes Region is hampered with

¹⁷⁷ Article 26 of the Vienna Convention on the Law of Treaties, 1969 (1969) 8 ILM 678.

¹⁷⁸ Came into force on 17 April 1978, the date by which the instruments of ratification of the signatory States had been deposited with the Government of Rwanda, in accordance with article 35. The deposit of the instruments of ratification was effected as follows: Rwanda (13 January 1977), Burundi (07 January 1977) and DRC then Zaire (17 April 1978).

¹⁷⁹ The Dar es Salaam Declaration founding the ICGLR came into effect immediately on 20 November 2004, but the Pact came into force after normal procedure of international instrument ratification on June 2008; eight member states ratified it then, except Soudan Zambia and Angola.

¹⁸⁰ Kazadi-Mpiana J (2013) 231.

¹⁸¹ Rwanda and Burundi are arguing, in 2013, against judicial provisions of Great Lakes Region instruments specially Article 4. They are entrenched in opposed position.

regard to the monitoring of its effects and the implementation of its provisions, as well as the aggregation of different interests in the region.

The overall result of this main challenge to regional integration in the Great Lakes Region is the problematic reality of 'law translation,' by the fact that 'treaties, protocols, regulations, decisions, principles, objectives and general undertakings cannot be applied directly to produce effects in member states without being domesticated within national laws of Member States'¹⁸². Being monists did not give direct effects to ECGLC community law in the Rwanda, Burundi and DRC as it should have, by its reception and implementation or upholding by Member States judicial institutions appeared to be non-existent when mostly needed (genocide, wars, internally displaced persons and refugees rights, etc.).

The Rwanda, Burundi and DRC Constitutions proclaim the supremacy of treaties and protocols over their national laws.¹⁸³ However, national incorporation of community law within their national laws, and the use of this law as an aid for the construction of a national judicial philosophy which informs the judgements of national courts, appear to be lacking.

From studies' researches, no case-law has been found relying on ECGLC and ICGLR instruments in the three Member States.

3.6.3 Overlapping legal obstacles

The Great Lakes Region's integration initiatives and mechanisms are strangled by Member States overlapping responsibilities arising from overlapping instruments. This overlapping membership of regional integration organisations has resulted in contradictions in policy objectives and goals. This problem is associated with the lack of commitment due to divided loyalties, and poor funding due to scarce resources for the several organisations. Different instruments have been used to promote more balanced integration development within the region but did not provide for compensation. For example, the ICGLR's approach to regional integration is based on encouraging co-operation between relevant Member States

¹⁸² Oppong R F 'Making regional economic community laws enforceable in legal systems - constitutional and judicial challenges' (2008) *Integration in Southern Africa Yearbook* 149.

¹⁸³ The **DRC Constitution (2006)** provides in Article 215 that: Treaties and international agreements which have been conclusively ratified, upon their publication, are superior to organic laws on reserve of reciprocal compliance. The **Rwanda Constitution (2003)** provides in Article 190 that: 'Upon their publication in the official gazette, international treaties and agreements which have been conclusively adopted in accordance with the provisions of law shall be more binding than organic laws and ordinary laws except in the case of non-compliance by one of parties.' **Burundi Constitution (2005)** provides in Article 163 establishes the ratification of treaties or protocols by an organic law but do not establishes a hierarchy.

or RECs operating in the region, in the implementation of regional common projects, but does not resolve the multiple memberships created.

Furthermore, the Member States' multiple memberships of several sub-regional economic organisations is being seen as an obstacle rather than as a benefit for regional economic co-operation and integration policies.

The Société de Contrôle de l'Exploitation du Gaz Méthane du Lac Kivu (SOCIGAZ) is a bilateral entity established by the Republic of Rwanda and DRC to coordinate development and share gas fees between the two countries. It manages the development of methane gas resources of Lake Kivu but, would like to be an ECGLC common infrastructure or agency instated to integrate the Great Lakes Region by exploiting and trading gas for the benefit of all Member States.¹⁸⁴ The ICGLR took a decision for the revival of ECGLC common infrastructures or 'common agencies'¹⁸⁵ in order to promote integration, but it carries on by having a proposed energy related project designed to extract the same methane gas in Lake Kivu for use within the Great Lakes Region. Another example is found in judicial instruments, but they do not resolve the issues of implementation of, and individuals' access to, community law.

The ICGLR Pact states that 'The Member States undertake, in accordance with the Protocol on Judicial Cooperation, to cooperate in matters of extradition, judicial investigation and prosecution'¹⁸⁶ and the ECGLC Protocol on Judicial Co-operation states that 'The Member States undertake, in accordance with the Protocol on Judicial Cooperation, to cooperate in matters of extradition, judicial investigation and prosecution'.¹⁸⁷ From a legal perspective, what are the motives which led to the adoption two instruments for same matters? Are the new 'panacea institutions' fully equipped to implement these instruments?

Is an increase of Member States of the ICGLR and the new interests put in the balance guaranteed to bring success in the Great Lakes Region? Is the new ICGLR Protocol more

¹⁸⁴ Article 3 of the ECGLC Convention designates them as common agencies'.

¹⁸⁵ ICGLR Project 3 2 1 'Relance de la Communauté Economique des Pays des Grands Lacs et de ses Institutions Spécialisées (EGL, SINELAC, IRAZ ET BDEGL)'. See also Article 19 of the Pact which stands as 'The Programme of Action for Economic Development and Regional Integration'.

¹⁸⁶ Article 7 of the ICGLR Pact 'Protocol on Judicial Cooperation'.

¹⁸⁷ Article 1 of the Convention on Judicial cooperation between Burundi, Rwanda and the DRC (Zaire) of 21 June 1975.

efficient than the ECGLC one, but both involve countries of the region and use the same wording?

The ECGLC Convention opens accession to more members in affirming that, ‘This Convention may be acceded to by other States in the Great Lakes region’.¹⁸⁸ The motives justifying other instruments undertaken for sustainable development, are not for regional integration of the Great Lakes Region but political. The ECGLC Convention confers exclusive interpretive competence on the as yet not implemented ‘Arbitration Commission’, but the ICGLR confers this competence on the African Court of Justice.¹⁸⁹ But the revival of the ECGLC was partially effected by the ICGLR’s Project 3 2 1 which expresses the two organisations willingness informally co-operate. In view of these considerations, conflicts are latent and will erupt in the long term.



¹⁸⁸ Article 36 of the ECGLC Convention.

¹⁸⁹ Article 29 of the ICGLR Pact.

3.6.4 Trade law hindrances

The ECGLC's integration aims are focused on promoting and intensifying trade and the movement of persons and goods,¹⁹⁰ as well as devising, planning and encouraging the organization and development of activities of common interest.¹⁹¹ From this legal basis came what are popularly known as 'the common infrastructures or services or agencies'. However, these initiatives went bankrupt after years of limited successes, and failures qualified by some scholars like Bwenge as 'hibernation'. They came back to life by the ICGLR instruments and engagement. On legally speaking, which instrument is established to manage possible relational issues and consequences between the two organisations or Member States involved, the first one which led to bankruptcy or the untested new ones? Foreign and local investors confidently will bring their investments into the region in general and common infrastructures in particular, in judicial limbo?

African countries in general and Great Lakes Region Member States in particular have small economies. They have to regroup in order to broaden their markets and provide weight in any economic negotiation. In this respect, the ICGLR's defined approach to regional integration is based on stimulating trade co-operation between Member States and relevant RECs operating in the region by implementing regional projects and easing the burden of multiple memberships on countries. These co-operating and integrating approaches have to be defined and examined within the content of trade and competition law. These horizontal and/or vertical relations have to be structured and arranged in order to be benefit producing for all. Regional economic organisations with unmanaged relational issues eventually become obstacles to, rather than benefit for regional integration, and their instruments reduce positive impacts (resources, for example) on trade, for example, by opening uncontrolled borders without any advantage or compensation from non-members. They serve as sources of tariffs and/or non-tariff barriers and can be a dumping ground of the region.

The equilibrium between trade creation and trade diversion is an important determinant of the overall benefits of a regional integration block. The said equilibrium is based on auto centric trade policies in order to minimise differences between productivity and endowment factors. However, in the Great Lakes Region informal trade and economic

¹⁹⁰ Article 2 (3) of the ECGLC Convention.

¹⁹¹ Article 2 (2) of the ECGLC Convention.

interdependencies clearly fuelled violence in the past but also offer a crucial entry point for peaceful co-operation across political divergences if trade is formalised.¹⁹² The need for 'formal trade incentives' is critical in order to benefit from the differences found through the production of different products or the reduction of costs among the Member States in order to lead to an increase in growth and resources. These elements can be efficiently evaluated through establishing competition rules in the integration bloc.

The ECGLC's promotion of regional economic co-operation and integration is not notified to the WTO.¹⁹³ The Customs and Trade Protocol signed on 31 January 1982 by Rwanda, DRC and Burundi seems not to have been registered by the United Nations Secretary General's office.¹⁹⁴ These legal obstructions to regional trade are completed by tariff and non-tariff barriers on formal and informal trade among ECGLC members. The ICGLR Member States' in trade reduction is scattered among allegiance to trade instruments. These legal overlapping are a burden and not an incentive to regional integration in the Great Lakes Region.

3.6.4 Effects obstacles

The ECGLC Convention has been ratified by the three member states, Rwanda, Burundi and DRC. The ICGLR Pact and subsequent documents have also been ratified by its Member States. The two organisations' instruments have been ratified with the backing of Member States (monist for the three ECGLC Member States and dualist for other ICGLR members) Constitutions guarantying their domestication. But the ECGLC and its instruments are intergovernmental cooperation setting and not individuals. 'It is insignificant if international law becomes part of national law but individuals cannot rely on it, or if reliance on it is contingent on preconditions that make such reliance largely illusory.'¹⁹⁵

By excluding individual reliance on them, these international instruments lead to an overwhelming predominance of politics on national law and jeopardize the direct effects principle. Maybe these are reasons for not finding case law where Great Lakes Region individuals invoke these community laws before national courts. The Member States constitutions provide for the supremacy of community law. However, the population in the

¹⁹² Westerkamp M, Feil M & Thompson A 'Regional Cooperation in the Great Lakes Region A contribution to peacebuilding?' (June 2009) 11 available at www.initiativeforpeacebuilding.eu (accessed 30 June 2014).

¹⁹³ Schiff M & Winters A L *Regional Integration and Development* (2003) 28.

¹⁹⁴ De Matons G J *Facilitation des transports et des échanges en Afrique subsaharienne Recueil des instruments juridiques internationaux Traités, Conventions, Protocoles, Décisions, Directives* (2004) 89.

¹⁹⁵ Oppong F (2011) 44.

region is unable to invoke its terms in order to exercise their rights. Individuals do not have standing before the Arbitration Commission (provided for by the instruments and as yet not established) and did not participate in the ECGLC decision making structures and agencies. However, it is of the utmost importance to note that individuals are a particular medium through which regional integration organisations and their instruments can strengthen relations with/between member states. The legitimacy of the ECGLC and the ICGLR should be tested and approved by the populations who are the first beneficiaries of their work and influence.

The ICGLR instruments innovate by providing for referring possible cases to the African Court of Justice, while the ECGLC one creates a dead-end with its Arbitration Commission's interpretive exclusivity. However, these organisations have a long way to go and many things to prove.

3.6.6 Security obstacles

The ECGLC and ICGLR instruments are burdened by security issues and requirements in and for the Great Lakes Region. These issues challenge any developmental mechanism or initiative taken in the Great Lakes Region and lead to the undermining of many existing potential. Negative groups', such as the Lord Resistance Army (LRA) and Allied Democratic Forces/National Army for the Liberation of Uganda (ADF/NALU), the Front Democratic pour la Liberation du Rwanda (FDLR) and Interahamwes (from Rwanda), and others from Burundi, are disrupting trust and economic activities among Great Lakes Region countries. Sometimes these groups are used to further certain hidden agendas such as plundering another country's mineral resources (case of the DRC). The groups are one of the major destructive forces against the building of Great Lakes Region integration.

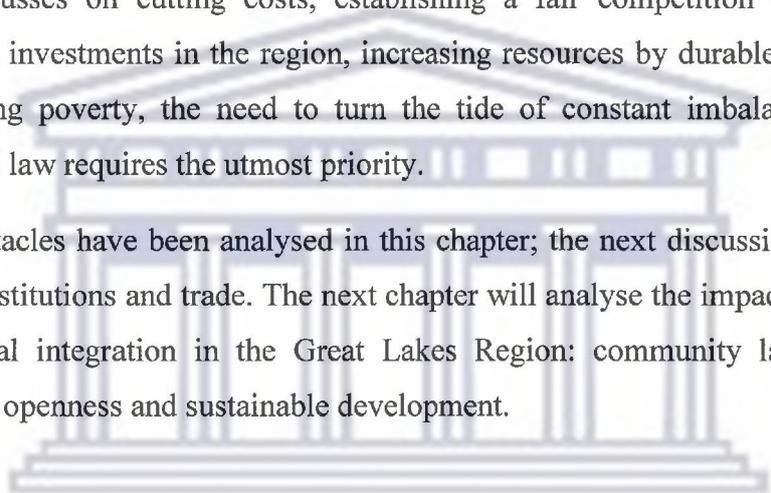
The real commitment to regional integration is hampered by security development and management issues in the Great Lakes Region. The Great Lakes Region communities are not assisted by the recent initiatives which exclude them from participating and exercising their rights (case of the ECGLC) or by external initiatives that are not rooted in the region (case of the ICGLR). The ICGLR, particularly, is criticised for having foreign hidden agendas.

3.7 Conclusion

By opting for regional integration, Member States have lawfully committed themselves to a process in which common policies, the development of rules and regulations and the application of such policies are formulated. These instruments appear to be integrating factors by consensus of the Member States. The ECGLC and ICGLR instruments were designed for regional co-operation rather than integration.

Torn apart by overlapping instruments dealing with regional integration, the Great Lakes Region is unable to make substantial gains from the current status of unchecked trade. Knowing that regional integration's core goal is to establish a large and open economic community that focusses on cutting costs, establishing a fair competition environment, attracting diversified investments in the region, increasing resources by durable growth, and in the end alleviating poverty, the need to turn the tide of constant imbalance between regional and national law requires the utmost priority.

Multiple obstacles have been analysed in this chapter; the next discussion will focus on their effects on institutions and trade. The next chapter will analyse the impact of the legal obstacles on regional integration in the Great Lakes Region: community law, common infrastructures, trade openness and sustainable development.



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CHAPTER FOUR

THE IMPACT OF LEGAL IMPEDIMENTS ON REGIONAL INTEGRATION IN THE GREAT LAKES REGION

4.1 Introduction

The previous chapters have given an understanding of the legal obstacles to regional integration in the Great Lakes Region, and of the different standards set internationally by the GATT/WTO (General Agreements on Tariffs and Trade/World Trade Organisation), continentally by the AEC¹⁹⁶(African Economic Community), and finally by the Great Lakes Region's integrating instruments. However, this chapter focusses on how legal obstacles have impacted on regional integration schemes in the Great Lakes Region.

The first part of the chapter analyses the politico-legal background to the initiation of regional integration in the Great Lakes Region. It sets the stage for a broader understanding of why regional integration in the Great Lakes Region was set as a mechanism through which the region can attain peace and sustainable development, and concurrently answers some questions about possible successes and failures.

The second part of the chapter looks at how legal obstacles have impacted on the transnational economic development between the ICGLR and the ECGLC the Great Lakes Region.

4.2 Politico-legal background

4.2.1 Introduction

The Great Lakes Region's political history is filled with long periods of instability and strained inter-tribal relationships. The instability and the strained inter-tribal relationships are consequences of the non-management of the inter-states issues. The management of the

¹⁹⁶ The African Economic Community is first, an organisation of the African Union states. Its aims are: the establishment of mutual economic grounds for African States; there after creates free trade areas, customs unions, a single market, a central bank and ultimately establishing an economic and monetary union on African continent. See Treaty establishing the African Economic Community available at www.au.int/.../TREATY-ESTABLISHING-THE-AFRICAN-ECONOMIC-COMMUNITY.pdf (accessed 30 June 2014).

problematic refugee questions,¹⁹⁷ access to power and its management, access to regional resources and their redistribution, sovereignty, and economic mismanagement in the region are accentuated by political considerations in the Great Lakes Region.¹⁹⁸ These political issues and consequences condemn the Great Lakes Region Member States' integrating initiatives to undergo challenging periods as a result of internal and regional wars with their collateral damage (based on disintegrating factors).¹⁹⁹ They almost destroyed the trust among Member States and the gain of regional integration initiatives.²⁰⁰ These considerations mark the dialectic relations between political, economic and legal structures, with politics conditioning all. As reaffirmed by Hilpold: 'We should not forget that political motives were of decisive importance for the creation of Article XXIV and it was also of central importance for each integration project of the past.'²⁰¹

While regional trade can be used as a regional reconciler, it seems also necessary to take into account other social, political and judicial factors in order to attain effective regional security; otherwise, it is not really sufficient. Though, Bastian argues that trade negotiations between leaders of neighbouring countries are likely to result in a higher degree of trust between them.²⁰²

So, an assessment of regional trade integration instruments and the implementation of its freedom should be conducted by considering political elements. Exclusion of these elements, leads to a partial understanding and does not provide the full picture of the integration agreement and legal concessions made. Some details concerning political elements are in chapter two. However, the new political will and the development of the region require these issues to be transcended.

4.2.1 Freedom of trade in the Great Lakes Region

As described earlier in chapter 3.6.4, the Great Lakes Region free trade instruments are signed but remain not implemented. These legal obstacles impact negatively on trade in

¹⁹⁷ Rwanda and Burundi have highest population density on square kilometre and the DRC has the lowest in the region. The DRC acted as 'big brother' offering asylum to refugees from Burundi and Rwanda but legally, refugees' status and rights are still in limbo today.

¹⁹⁸ Ntirumenyerwa M K G 'La Crise dans la sous-region des Grands Lacs: Quand les protagonistes tournent le dos au droit' 2004 256 258 available at www.ua.ac.be/obsj/00110850 (accessed 30 June 2014).

¹⁹⁹ Excessive emphasis on sovereignty and its corollaries led to autocratic politics and regimes in the Great Lakes Region, minimised human rights in the development and pursuit of ambitious political goals, and acted as a disintegrating factor.

²⁰⁰ Bwenge M A (2010) 3.

²⁰¹ Hilpold P (2003) 7 222.

²⁰² Bastian J 'Trade Diplomacy and Regional Integration' (1996) Report on World Bank Workshop, *London School of Economics* 3 (accessed 30 June 2014).

the region and restrict its flows. The rising cost of imports backfires by increasing the costs of living and reducing the possible competitiveness of regional companies. More importantly than ever for economic growth and job creation in the Great Lakes Region, the benefits from freedom of trade among Member States are minimal and do not serve as impetus for bold initiatives for larger market integration.

The task emerging from conditions set by the legal vacuum of trade instruments lack of implementation put a strain on the market and the region and reduce any possible dividends from regional trade. Burundi, DRC and Rwanda have committed more often for instating freedom of trade in the region under the ECGLC instruments but failed to traduce in reality what they have agreed upon and harvest gains from it. Bold political will lack in order to materialise all different agreements on trade and interior market opening in the Great Lakes Region.

Rwanda and Burundi (2008), and Kenya, Uganda and Tanzania (2007) adhered to the CU Protocols signed 02 March 2004 creating the Eastern African Community (EAC). Its protocols and policies regulate trade openness within this integrating organisation.²⁰³ It suppresses tariff and non-tariff barriers within the region's Member States, and prescribes common external tariff policies for the EAC. They institute ad valorem duties on 58 strategic products like rice, sugar, milk and related products.²⁰⁴ Then trade and related freedom in these countries are regulated by the EAC Protocol on trade and the CU. But Okumu and Nyakori found that a series of non-tariffs barriers continue to exist in the form of a long list of custom's documents and processing forms, plus certifications, which hamper trade integration.²⁰⁵

On the other hand, DRC became a Member State of Common Market for Eastern and Southern Africa (COMESA) and (Southern African Development Community (SADC) and adhered to their Protocols on trade openness and regulative policies. COMESA trade Protocols require from Member States to dress reforms lists of products to be incorporated on the agendas of its conferences. DRC and Rwanda have dressed these lists on those matters in 2011.²⁰⁶ However, Rwanda and Burundi for example, are not SADC Member States and DRC is not an EAC member. Moreover, Lee noticed that the application of the EAC common tariffs following the Eastern Africa Customs Union brought great increases in importation

²⁰³ Titeca K & Kimanuka C 'Marcher dans l'Obscurité: Le commerce informel transfrontalier dans la région des Grands Lacs' 2012 26 available at [www.international-alert.org/...](http://www.international-alert.org/) (accessed 30 June 2014).

²⁰⁴ Titeca K & Kimanuka C (2012) 26.

²⁰⁵ Okumu L & Nyankori O 'Non-tariff barriers in AEC Customs Union: implications for trade between Uganda and other EAC countries' (2010) in *Economic Policy Research*. Research Series n.75.

²⁰⁶ Titeca K & Kimanuka C (2012) 27 available at [www.international-alert.org/...](http://www.international-alert.org/) (accessed 30 June 2014).

taxes in Rwanda.²⁰⁷ She observed also that import taxes grew to 25% for fruits, vegetables, wheat, and animal related products. These legal impediments are leading to trade diversion.

The recall of SADC and COMESA instruments, is made for pure illustration of integrative instruments creating the adversely effects while overlapping in the Great Lakes Region. These instruments create a legal obstacle in the region but, are outside of this Mini thesis spectrum of research as detailed in chapter one. They are not specifically set for the integration of the Great Lakes Region but engage one, two or more Member States of the region and add more in the overlapping created.

Another dimension to take into account is more legal than technical. From a legal perspective, which of these instruments regulate trade and command freedom of trade in the Great Lakes Region? Apparently none, by virtue of the fact that anyone can be used to regulate trade and finally, none is used. It appears that trade in the Great Lakes Region is in a limbo created by these overlapping legal instruments. Great Lakes Region Member States commitment to these organisations has the potential to violate Article XXIV of the World Trade Organisation trading system and cause trade disruption in the region. The disruption lies in the fact that the instrument overlapping effects minimise the trade gains by imposing diverse external tariffs.

Other linked facts adding to the confusion within trade management in the Great Lakes Region, appear on different Member States' annual budgets and trade information. The annual budgets laws of the three core countries reveal certain differences. Burundi's 2012 and 2013 annual budget include funds from COMESA's financial dividends, but these funds do not appear in annual budgets of other two Great Lakes Region Member States who are also COMESA Members.²⁰⁸ Perhaps Rwanda and DRC reserved their full participation or are still observing the unfolding trade policies within the COMESA schemes.

The DRC ratified another trade related Protocol called Organisation for the Harmonisation of Business Law in Africa (OHADA)²⁰⁹ for the harmonisation of trade law and policies in Central and West Africa. The DRC would like to create the best-ever

²⁰⁷ Lee M (2002) 27.

²⁰⁸ Burundi 2012 and 2013 Annual budgets available at [www.admin.theiguides.org/...](http://www.admin.theiguides.org/) DRC available at www.leganet.cd Rwanda available at [www.minecofin.gov.rw/...](http://www.minecofin.gov.rw/) *The-National*... (accessed 30 June 2014).

²⁰⁹ OHADA is a system of business laws and implementing institutions adopted by sixteen West and Central African nations. OHADA is the French acronym for "Organisation pour l'Harmonisation en Afrique du Droit des Affaires", which translates into English as "Organisation for the Harmonization of Business Law in Africa". It was created on October 17, 1993 in Port Louis, Mauritius. Available at www.ohada.org (accessed 30 June 2014).

conditions for doing business in order to attract foreign direct investments in the country. It adhered on these instruments on its own, without other ECGLC partners. OHADA instruments require the harmonisation of Member States trade law with its principles. This adherence brought another problem to the Great Lakes region with its legal requirements and dimensions. For example, products imported by DRC under the OHADA provisions can be sold in Rwanda and Burundi under the ECGLC trade instruments or porous borders unregulated crossing.

The ECGLC Protocol on Trade and Customs Co-operation was signed on 10 September 1978 and modified on 31 January 1982 by DRC, Rwanda and Burundi with the objective to increase trade between these countries.²¹⁰ The Protocol sets no duties for imports, exports and transit in the Great Lakes Region if they abide by the rules of origin (if the products have as origin the territories of member states).²¹¹ With these trade impediments in the integrating instruments in the Great Lakes Region, trade went again via informal paths and multiple informal taxes imposed on merchandises.

Instead of creating trade in a wider trading area, the overlapping trade instruments restrain growth incomes and lower the demand for merchandises because of price increases resulting from informal entry and taxes. Despite immense growth potentials, trade development is still lagging behind compared to other regions with reasons entrenched in tariff and non-tariff barriers.²¹²

Lee concludes by emphasising that, from the revised and adopted ECGLC Protocol on Free Movement of Persons, Goods, Services and Capitals, the establishment of a PTA was set for 2010. He ends up by cautioning that the said protocol has not yet been ratified.²¹³

It is essential to recall that trade in the world in general, and in regional integration in particular, is based on 'comparative advantage' or 'comparative costs'. In general, a person or a country will specialise in the activity (trade or producing) in which she/he has a comparative advantage.²¹⁴ These elements can be efficiently compared by using reliable data from Member States services, but informal taxes and paths provide unreliable data which

²¹⁰ Grosdidier de Matons J 'Facilitation des transports et des échanges en Afrique subsaharienne/ Recueil des instruments juridiques internationaux /Traités, Conventions, Protocoles, Décisions, Directives' 2004 89 available at www-wds.worldbank.org/.../297320FRENCH0SSATPWP73F010Legal0... (accessed 30 June 2014).

²¹¹ Articles 1 and 2 of the ECGLC Protocol on Trade and Customs Duties.

²¹² Bruce C 'Challenges and opportunities in Central Africa and the Great Lakes Region/ stakeholders meeting of the Belgian Development Cooperation' 2014 available at www.assises-dgd.be/.../BRUCE_Pres (accessed 30 June 2014).

²¹³ Lee M (2002) 27.

²¹⁴ Mankiw G 'Principles of Microeconomics' 2005 2nd 3 available www.csun.edu/sites/default/.../micro2.pdf and www.montana.edu/.../ (accessed 30 June 2014).

cannot be useful. These conditions are created and instated by policies. This comparative advantage and related elements require sound policy and management rules. These gains, in order to achieve growth and increase resources in the region, can be achieved efficiently through the co-ordination and harmonisation offered by sound community law.

4.2.2 Community law in the Great Lakes Region

Community law in the Great Lakes Region integration environment is ‘polluted’ by multiple legal instruments, among which ECGLC and ICGLR instruments and institutions appear as most important. Setting specifically Great Lakes Region integration in their instruments, Member States are committed to promote sustainable and equitable economic growth and socio-economic development that will ensure poverty reduction with the ultimate aim of its eradication. This ideal is expressly taken care of in regional integration instruments through the following provisions:

‘In order to attain these objectives, the member States solemnly undertake to initiate appropriate action on the problems involved, in particular, through the establishment of common agencies and services, and by the signing of understandings, agreements or conventions’;²¹⁵

And

‘Attain regional integration through working towards the harmonisation of economic cooperation instruments, and adopt strategies for macro-economic convergence, and the implementation of regional policies for the free movement of people, goods and services’;²¹⁶

Finally:

‘Promoting cooperation and economic integration by harmonizing and coordinating national and regional policies with relevant regional economic communities so as to improve stability and economic competitiveness, and to reduce poverty.’²¹⁷

These objectives are broad and far-reaching by reason of the fact that they require regional co-ordination in obliging Member States of the Great Lakes Region integration organisations to tackle instruments by harmonising and co-ordinating them. To integrate the region and achieve goals set in these different instruments, Member States are invited to work on complementarity between national and regional strategies and programs, in order to achieve sustainable peace.

²¹⁵ Article 3 of the ECGLC Convention.

²¹⁶ The Dar-Es-Salaam Declaration Clause 38.

²¹⁷ Article 19 (a) of the ICGLR Pact.

However, community law implies more than expressing emotions or opinions. It implies sound mechanisms and political will to tackle obstacles to applicability and enforceability. Up to date, the 'instruments harmonisation' and 'policies and instruments coordination' provided for in the Convention and the Nairobi Pact seem more a declaration of intent for integration than a duty for Member States.

Each Member State of the two Great Lakes Region integrating organisations is also a member of competing trade blocks (the ECCAS, EAC and COMESA) with competing instruments which complicate applicability and enforceability. The overlapping created by multiple competing instruments gives way to arbitrary and challenging community law translations. Member States find through it, implementation delays explanation.

Although international instruments reception legally provided by their Constitutions, courts and tribunals are still reluctant to uphold these international instruments provisions in administering justice. This may be so because regional integration instruments in the Great Lakes region are inter-state co-operation agreements, side-lining individual and opening of larger space for co-operation between states' apparatus which hampers individuals' rights and development. Individuals are unable to rely on regional instruments by reason of the fact that their provisions are more repressive than protective.²¹⁸

The discrepancies and inconsistency in the application of the Rule of Law in the Great Lakes Region should appeal to regional institutions to offer an alternative to failing state justice.²¹⁹ State justice mechanisms have been transformed (and usually used as political tools) into instruments of public impunity and corruption, creating a vicious circle of violence (torture, iniquity, partiality, arbitrariness, etc.) in the region; and they here lost their essential attribute known as the 'mainstay' of state authority.²²⁰

The unsolved relationship between formal and informal systems of law in the Great Lakes Region has not been attended to by the Great Lakes Region's integration instruments.²²¹ The absence of Community Law's enforceability and implementation in the

²¹⁸ Great Lakes Region judicial instruments provide for criminal procedures than protection of individual rights.

²¹⁹ United States Institute for Peace 'Legal pluralism and post-conflict state reconstruction in the Great Lakes Region of Africa/ Project' (2005) 1 3 available at www.fewer-international.org/.../legal (accessed 30 June 2014).

²²⁰ United States Institute for Peace 'Legal pluralism and post-conflict state reconstruction in the Great Lakes Region of Africa/ Project' (2005) 1 3 available at www.fewer-international.org/.../legal (accessed 30 June 2014).

²²¹ Mastaki N J 'Le Droit au Juge dans les milieux du Sud-Kivu ruraux' 2012 41 available at www.nwu.ac.za/web/m_send/58106 (accessed 30 June 2014). He emphasises the fact that in the South Kivu (DRC) province customary courts have resisted to the introduction of formal courts. The main reasons are: customary authorities refused to acknowledge these jurisdictions and most importantly the rural population prefer customary courts for their fairness and equitability.

Great Lakes Region has negatively affected the common infrastructure built under the ECGLC's heyday. It is going to produce the same results even though sound policies for active regional integration are introduced in the Great Lakes Region.

4.3 Legal obstacles impact on the transnational economic development

The two integrative organisations (the ECGLC and the ICGLR) of the Great Lakes Region instated a bipartite in the region as detailed in chapter two. It (the bipartite) encompasses two important projects: project 3.2.1 and project 3.3.4 explained in the same chapter.

The ECGLC revival through common infrastructures or agencies constitutes project 3.2.1 and the Southern Corridor (Great Lakes Region Railway Project) (Ref 3.1.4) constitutes the second project. These projects constitute the main point of the bipartite.

The analysis of legal obstacles (detailed in chapter three) impact on the bipartite would lead us to the possible prediction of its success or failure.

4.3.1 The ECGLC and Common agencies

In the Great Lakes Region, common infrastructures found its essence and justification in the aim of the 'self-deliverance politic'²²² which was in action in DRC and expanded to Rwanda and Burundi. The same thinking or ideal prevails with regard to the building of further common infrastructure, within the ICGLR schemes, with other regimes and countries as previously explained in chapter two and three.

The International Company for Electricity known as (SINELAC), the Institute for Researches in Agronomy and animal science (IRAZ), the Great Lakes Countries Bank for Development (BDEGL) and the ECGLC Organisation for Energy in the Great Lakes (EGL) are common infrastructure or agencies or specialised institutions built by translating into reality the terms of the ECGLC Convention.²²³ From the aim which declares that the ECGLC

In Rwanda, the Gacaca were reinstated and Burundi, the Bashingantahe or men's of integrity still settling conflicts.

²²² Championed from the 1975s by DRC scholars such as, Professors Kamatanda Ngoy Nduba, Kangafu, Diur Katond and others. The content can be summarised in these terms: we have to deliver ourselves, nobody else can deliver us, our countries/continent must build industries to produce what we need, DRC must welcome all the people who want to come etc. Huge projects find their source in 'self-deliverance politic', like Inga dam, Ruzizi dam, etc.

²²³ SINELAC, IRAZ, BDEGL and EGL are French acronyms of these integrating and specialised units built under Article 3 of the ECGLC Convention.

Member States were resolved 'to devise, plan and encourage the organization and development of activities of common interest'²²⁴ to its similar which proclaim that,

'in order to attain these objectives, the member States solemnly undertake to initiate appropriate action on the problems involved, in particular, through the establishment of common agencies and services, and by the signing of understandings, agreements or conventions'²²⁵,

The Great Lakes Region's industrialisation has had a regional integration legal background. The aims were imbedded within the spirit of the Convention which says that this infrastructure was established 'in order to attain regional integration aims'. Member States recognised that integration, development and economic breakthroughs were not possible without the key infrastructure for developing the energy infrastructure from which production could be harvested.

The SINELAC has as its aim the exploitation of the Ruzizi II dam and trading the electricity produced to the three Member States national companies. Between 1991 and 2001, it sold an average of 45 percent (Rwanda), 17 percent (Burundi) and 21 percent (DRC) of the respective national production by an interconnection system.²²⁶ From these elements one can deduct why there is a need for and who the most need the common infrastructure.

The IRAZ's main mission is to carry out research in the fields of agronomy and to intervene in the execution of the Great Lakes Region's communitarian projects. The aim is for the Great Lakes Region to become food self-reliant. It coordinates researches from Member States institutes of agronomic research.²²⁷

The BDEGL received a mandate to mobilise financial resources in order to finance different communitarian projects related to regional economic integration and development. It financed multiple projects (industries) in different Member States.

²²⁴ Article 2 (a) of the ECGLC Convention.

²²⁵ Article 3 of the ECGLC Convention.

²²⁶ ICGLR Programme d'Action Régionale pour le Développement Economique et Intégration Régionale
Projet No. 3.2.1 RELANCE DE LA COMMUNAUTE ECONOMIQUE DES PAYS DES GRANDS LACS ET
DE SES INSTITUTIONS SPECIALISEES (EGL1, SINELAC2, IRAZ 3ET BDEGL4) Juin 2006 (Rev. 30 Août
2006) Original in French (2006) 4.

²²⁷ ICGLR Programme d'Action Régional pour le Développement Economique et Intégration Régionale
(2006)4.

EGL's main mission is that ECGLC's Member States co-operate in all fields related to energy: from project feasibility studies, plan-making and execution (building). It contributed efficiently to the building of the inter-community Ruzizi II dam.

All the common infrastructure or agencies have been perfected by many Protocols and Agreements deepening regional integration in the Great Lakes region. Among these Protocols and Agreements are those that provide for free circulation of persons, the introduction of an ECGLC passport and special identification card, as well as trade and related agreements (finance and monetary).

The formulation and implementation of the relevant Protocols and related Agreements was left to the co-operation of Member States. Although Community Law provides for the Arbitration Commission, it appears that it is exclusively an inter-Member States matter,

Since it declares that the Arbitration Commission shall be competent to rule on any dispute between Member States under the Convention.²²⁸

And also,

The Arbitration Commission ensures compliance with the law by interpreting and applying the ECGLC Convention.²²⁹

The fate of all the stakeholders in the different Member States is left to the Member States' institutions that serve the cause of justice.

The revival of the ECGLC as a regional integrative organisation and the different protagonists have been detailed above and their standings explained also. But legal consequences of the agencies revival and conditions have been also eluded by the revival instrument. May be the omission satisfies political reasons not legal.

The bankruptcy of the ECGLC agencies have been established by researches (Bwenge and Kabamba's works have details in this respect) conducted in the region and the responsibilities confirmed. Beside political and economic reasons, legal responsibilities have not been bore by the culprits. Until then, prosecution of presumed suspects in order to prevent the repeat or to cure the society did not follow.

²²⁸ Article 26 of the Convention.

²²⁹ Article 25 of the Convention.

Trade protocol signed but not ratified, continues to affect the daily living of Great Lakes Region and diverts trade with its dividends. With these obstacles, the youth employment and jobs creation in the Great Lakes Region are affected negatively.

At Dar-Es-Salaam discussions (2004) creating the ICGLR, and particularly in the discussions on the Pact on Security, Stability and Development in the Great Lakes Region (2006), the leaders agreed that notwithstanding the failure of the common infrastructure instituted by the ECGLC, decisions had to be made in order to revive the ECGLC's common infrastructure and to create new common infrastructure for the development and building of sustainable peace and security in the Member States.²³⁰

4.3.2 The Southern Corridor (Great Lakes Region Railway Project)

This project was properly elaborated by the ICGLR, in order to reinforce economically, the Great Lakes Region Member States of the ECGLC and itself. It is a chef d'oeuvre of the organisation and its aims, recalled through the Dar-Es-Salaam Declaration in these terms:

'Build a unified economic space for enhanced economic efficiency and for the eradication of poverty, and achieving sustainable economic development.'²³¹

The Southern Corridor railway would like to be a link between Northern Zambia, western and north western Tanzania, Burundi, Rwanda and DRC first. Secondly, it intends to unify the Central, Great Lakes, Southern and Eastern Africa, Burundi, DRC, and Uganda. It aims to promote trade, flow of goods and other economic activities among these regions as a manifestation of the economic unification of the said space.

The Nairobi Pact can be recalled in this respect through The Programme of Action for Economic Development and Regional Integration which states that:

'The Member States undertake to jointly promote a prosperous, integrated economic space, to improve the standard of living of its populations, and to contribute to the development of the Region, by implementing the Programme of Action for Economic Development and Regional Integration.'²³²

The Southern Corridor railway is the missing link for integrating this economic space and improving conditions of life in region by reducing poverty. The main focus is the

²³⁰ Preamble to ICGLR Pact of 2006.

²³¹ Dar-Es-Salaam Declaration Clause 41.

²³² Article 19 (1) of the Nairobi Pact.

development of the region. Through its deployment, it will facilitate trade and related activities, flow of goods and other economic activities, and, become an alternative transport system to further interconnect different countries in the regions. The project executive summary provides significant explanation by stating that,

The Southern Corridor railways project is a connection of many regions among which, the Great Lakes Region, the SADC region and COMESA region. It has been proposed to many partners from these regions for funding and other participations.²³³

Many Critics of the transnational economic development built by the bipartite between the ICGLR and the ECGLC will be recalled in this Mini-thesis in order to understand the challenges posed by it. The projects have been designed in hope of economic benefits promised by different donors of the Great Lakes Region. They promised a reconstruction fund for the region as an incentive for peace. Heyl observes that,

‘One common interest among the ICGLR states can be assumed: the countries had been promised access to additional development funds by the ICGLR. That is also why so many countries suddenly wanted to join the ICGLR. The idea of a Marshall Fund for the Great Lakes Region prompted the countries to reach a consensus in the negotiation of the Nairobi Pact.’²³⁴

Through Heyl comments, one can notices that one of major reasons of Member States participation in the ICGLR creation and projects is not genuine peace and stability, but financial. Genuine peace and development require more than financial interests but real commitment to regional ideals and instruments. The applicability of such initiatives is questionable and its implementation sluggish.

Heyl cautions that,

‘Judging by the lack of financial commitments for the ICGLR special fund for reconstruction and development, there is a risk that participating countries may no longer see any additional value in the ICGLR.’²³⁵

United and involved in the ICGLR creation and implementation in hope of ‘additional financial value, especially GoFs supports, the possible future of the organisation and its innumerable projects are questionable and mostly hypothetical. Most of friends’ assistances are

²³³ Southern Corridor railways project (2006) 3.

²³⁴ Heyl C (2010) 97.

²³⁵ Heyl C (2010) 97.

always bearing conditions and their own objectives. These donor agencies operations can hinder the regional development and co-operation, by the fact that, they communicate directly with States and randomly ignore other stakeholders who may be presumably against their agendas. One convincing example is the EU and its partnerships with different countries. Heyl noticed that,

‘Some donors – in particular the EU, Belgium and France – seemed to view the CEPGL as an alternative to the ICGLR, however.’²³⁶

Beside of re affirming and supporting the positive complementarity and the link between the two integrative organisations, donors and GoFs financed the ECGLC concurrently to the ICGLR. They poured millions of Euros in the first and restrained the promised additional funds in the latter.

The two projects linking the ICGLR and the ECGLC for the Great Lakes Region integration were diligently elaborated without the bipartite compromise. Moreover financial and political pressure from the population living in the region and the dwindling support to the ICGLR multiple projects (45), worked for the late signing of the co-operation. The long awaited bipartite agreement between the ICGLR and the ECGLC appears to be a manifestation of interests or expression of ideals, for the Great Lakes Region’s peace and security challenges. In support of these objectives, the ICGLR embarked on projects performed by the ECGLC within its ‘common infrastructures’ or ‘specialised agencies’. It created the Special Fund for Reconstruction and Development (SFRD) with responsibility in these terms:

‘1. A Special Fund for the reconstruction and development of the Great Lakes Region shall be created in accordance with the Protocol on the Specific Reconstruction and Development Zone, but the legal status of such a Fund shall be defined in a separate document;’

‘2. The modality of the operation of the Fund shall be determined by a specific legal framework to be agreed with the African Development Bank, which shall manage the said Fund;’

‘3. The financing of the Fund shall be ensured by mandatory contributions from the Member States as well as by voluntary contributions from cooperating and development partners.’²³⁷

Moreover, the Pact specifically emphasises that the SFRD is established

²³⁶ Heyl C (2010) 102.

²³⁷ Article 21 of the ICGLR Pact.

‘for the purpose of supporting the implementation of the Protocols and Programmes of Action selected in the priority areas of peace and security, democracy and good governance, economic development and regional integration, and humanitarian, social and environmental issues.’²³⁸

As a financial institution of the ICGLR its scope crosscuts the BDEGL as regards economic development and regional integration. Since no co-ordination or co-operation have been legally established, confusion and frustration are possible. Possible foreign direct investments for the region could be diverted to other regions because co-ordination is lacking and overlapping mechanisms of development are fulfilling same mandates. Maybe the ICGLR’s thinking is based on its large number of Member States, but the ECGLC Convention is also open to other member states willing to join: ‘This Convention may be acceded to by other States in the Great Lakes region.’²³⁹ This opening has never been used by other countries in order to expand the organisation regionally.

The ICGLR Member States have taken responsibility of financing the organisation and its projects. The contribution made by Member States is insignificant but acknowledgeable. Heyl noticed contributions from ICGLR Member States to the SFRD in order to sustain the organisation and allow the fund to play its financial role in the Great Lakes Region.²⁴⁰

Most of donors to the ICGLR call for the organisation to specialise in peace and security issues. But, the ICGLR Member States acknowledge the implication of peace and security issues with development of the region. In their understanding, peace and security cannot be achieved separately; only in co-ordination with sustainable development. But, this co-ordination creates scopes overlapping between the ICGLR and the ECGLC which is potentially diverting foreign investments to the region.

The overlapping of regional integration and development led to the signing of co-operation agreement between ICGLR and ECGLC In March of 2010 as above explained, especially in the area of transnational economic development.²⁴¹ This agreement did not solve the legal issues but have been political stunt in reaction to the fall of enthusiasm of foreign

²³⁸ Article 10 of the ICGLR Pact.

²³⁹ Article 36 of the ECGLC Convention.

²⁴⁰ Heyl (2010) 99.

²⁴¹ Heyl C (2010) 102.

supporters. The dwindling support and the competition between the two organisations led to the signing of a partial agreement in favour of the ECGLC.

The overlapping and confusion created by duplication of mandates between the ECGLC and the ICGLR in the Great Lakes Region is one of the reasons for donors' reluctance in financing regional integration. It diverted foreign direct investments or assistance by the domino effect of the situation created in the Great Lakes Region, and is an obstacle to sustainable development of the region.

4.3.3 Sustainable development in the Great Lakes Region's integration

Regional integration is seldom linked to sustainable development by virtue of the fact that it targets human generations (the people of today and tomorrow) and ensures that it meets the needs of the population living in the region. Clause 37 of the Declaration made provision for sustainable development in the Great Lakes Region by insisting on the promotion of a shared vision of economic development and regional integration that supports comprehensive and sustainable development.²⁴² The main purpose of this comprehensive and sustainable development as envisaged under clause 37 was to promote the economic and social development of Member States and to integrate human development, social justice and equity within its ambit.

The Pact provides also for sustainable development as a means through which the conditions for security, stability, and sustainable development between the Member States can be created and upheld.²⁴³ Sustainable development, as a vision, is undertaken in order to meet the needs, now and in the future, for human, economic, and social development within the restraints of the life support systems of the planet.²⁴⁴ It has been integrated into the Great Lakes instruments in order to sustain economic development having human beings at the epicentre and to correct the ECGLC's distorted vision.

Growth, trade or co-operation activities through regional integration can be realised efficiently by taking into consideration the human dimension of life, and Member States are urged to develop activities expressing their wish for human development. These activities should focus on the increase of resources of the region, countries and population in a long

²⁴² Clause 37 of the Dar-Es-Salaam Declaration.

²⁴³ Article 2 (c) of the ICGLR Pact.

²⁴⁴ Kates W R, Parris M T and Leiserowitz A A 'What is sustainable development? Goals, Indicators, Values and Practice' 2005 20 available at www.hks.harvard.edu/sustsci/ists/docs/whatisSD_env_kates_0504 (accessed 30 June 2014).

term vision, without dehumanising them. One of the ways of doing so is making the law work for all. When law works for everyone, it enforces and defines rights and obligations of everyone within its ambit. It reaffirms its supremacy in adjudicating the interests of all and offers sustainable guaranties for development.

Development depends on more than markets and economic policy; one has to know that it also depends on how laws and institutions function and relate to citizens.²⁴⁵ Regionally, the law allows people to interact with one another in peace, and determines the future of public and private institutions. Law produces effects for individuals and society. The Great Lakes Region integration instruments are silent on the rights created by them, which should have direct effects on individuals. They leave individuals to their fate irrespective of the mechanisms and principles recognising individuals' major role in the economic integration processes. An illustrative example is the limitation of the ECGLC Arbitration Commission competences, in these terms: 'The Commission shall be competent to rule on any dispute between member States under this Convention.'²⁴⁶ This makes regional integration in the Great Lakes Region in accordance with the ECGLC Convention, exclusively an inter-states matter with no place for individuals and their rights. No provision has been made for national judicial institutions of member states in the Convention.

Practically, issues of community law can arise before national judicial institutions by the direct invocation of its terms by potential culprits/parties. No Community court has been provided for by the Convention and preliminary reference proceeding was excluded from it. The ICGLR Pact did not provide for preliminary reference proceeding either, despite its determination summarised as follows in its Preamble: 'Determined to ensure the strict observance of the standards and principles of international humanitarian law, notably those relating to the protection and assistance of women, children, refugees and displaced persons, the violations of which have seriously affected the populations concerned.'²⁴⁷

As in the Convention, the Pact stipulates that 'the Member States undertake, in accordance with the Protocol on Judicial Cooperation, to cooperate in matters of extradition, judicial investigation and prosecution'.²⁴⁸ The Convention, the Pact and Protocols grant to individuals' access to justice, as culprits to be extradited but not as human being having rights

²⁴⁵ 'Making Law Work for Everyone' Report of the Commission on Legal Empowerment of the Poor (2008) 21 available at www.undp.org/.../making-the-law-work-for-everyone---vol-i---english/ (accessed 30 June 2014).

²⁴⁶ Article 26 of the ECGLC Convention.

²⁴⁷ Preamble to the ICGLR Pact.

²⁴⁸ Article 7 of the ICGLR Pact.

and obligations which need to be secured by regional appellate institutions. Among these rights, are those which guarantee all others namely the access to justice and the rule of law in the region. The fact is that the largest proportion of the population in the Great Lakes Region, live in isolated and rural areas with limited secure access to justice and other state services.²⁴⁹ They live their life not within the law, but outside of it, and with unlawful consequences inflicted upon them in the form of formal and informal taxes on any activity. They enter into informal businesses and labour agreements, run unregistered activities, and mostly occupy land to which they have no formal rights. Then law becomes a luxury in rural areas and for their people who constitute the majority of the active population.

The core countries in the Great Lakes Region have legal issues to tackle in protecting human rights and the ICGLR observes that 'it can be outlined that different wars which engulfed the Great Lakes Region are consequences from the ECGLC failures'.²⁵⁰ The first known genocide on African Continent occurred here in the Great Lakes Region by mostly human rights violation and public institutions inability to aggregate efficiently all interests in the region.

4.4 Conclusion

The integration of the Great Lakes Region needs to take into account the overlapping of instruments in order to realise its aims by adopting separate legal and institutional arrangements regionally and assist in establishing national frameworks for domesticating and implementing existing legal instruments on regional trade and other related activities.

It should be backed by the implementation of statutory institutions for sustainable co-operation leading to poverty reduction and trade creation. Most importantly, the need for compromise schemes is crucial to regional integration in the Great Lakes Region by the virtue of knowing that 'one of the successes of sustainable development has been its ability to serve as a grand compromise between those who are principally concerned with nature and environment, those who value economic development, and those who are dedicated to improving the human condition'²⁵¹.

²⁴⁹ Kimanuka C & Lange M 'The crossing/small-scale trade and improving cross-border relations between Goma (DR Congo) and Gisenyi (Rwanda)' 2010 24-6 available at www.international-alert.org/sites/default/files/.../thecrossingsept2010.pdf (accessed 30 June 2014).

²⁵⁰ ICGLR abstract on 'RELANCE DE LA COMMUNAUTE ECONOMIQUE DES PAYS DES GRANDS LACS ET DE SES INSTITUTIONS SPECIALISEES (EGL, SINELAC, IRAZ ET BDEGL)' project 3 2 1.

²⁵¹ Kates W R, Parris M T & Leiserowitz A A (2005) 19.

Regional institutions and frameworks require care to be taken in consideration and drafting. While there have been attempts at developing and adopting CU legislation and policies, and FTA agreements, as well as implementing common institutions, more still need to be done in order to address legal loopholes which hamper the trade, peace and security of the region. More can be achieved by addressing the still existing obstacles in the Great Lakes Region as with regard to African regional integration the problems increase when it comes to implementing and abiding by agreements. There is ample scope for greater efforts in implementing the various agreements which have been signed by the Member States.

Political considerations have had their negative effects on progress in the negotiations related to legal instruments. Negotiations for co-operation between the ECGLC and ICGLR cooperation were launched in 2006, but in March 2010, the ICGLR finalised a partial cooperation agreement with the ECGLC in the area of transnational economic development.²⁵² Today, however, there is competition between ICGLR and ECGLC because of the overlapping aims of their respective agreements.

The overlapping agreements impact negatively on the development of the Great Lakes Region's integration, but it is not the only obstacle. The lack of political will for regional integration is manifest in the Great Lakes Region and is evidenced by the fact that leaders make alliances for short-term gains and not for long term. They are designed in order to attract possible investors but do not establish the capacities to honour agreements and protect rights. It is bringing wars and duplicity into the region as political mean to realise economic gains. The challenge to policymakers and legislators in the Great Lakes Region, therefore, remains: how to direct and drive the initiatives of the ECGLC and ICGLR as key policy issues and priorities in poverty alleviation and development of the region.

The Great Lakes Region and its integrating organisations do not constitute one of the AEC's economic integrating blocks. As a result they are excluded from the AEC assistance schemes; hence the desired outcome is elusive and not forthcoming soon. It would not be amiss, however, to argue that successful harmonisation of existing legal frameworks could bring benefits in terms of the creation of a wider market for the business communities in the Great Lakes Region. This would promote fair competition and create economies of scale for traders within the consolidated region. The obstacles to regional integration can only be

²⁵² Westerkamp M, Feil M & Thompson A, "Regional cooperation in the Great Lakes Region," Initiative for Peace- building 2009 102 available at <http://www.initiativeforpeacebuilding.eu/pdf/> (accessed 30 June 2014).

resolved by sound policies, political will and economic self-reliance based on sound, harmonised legal instruments.

The Great Lakes Region Member States are locked in a dead end road of development without potential successes by multiple legal overlapping. Multiple instruments not registered at the WTO or the UN general secretariat, not recognised by the EAC as a regional developing bloc and not having legal institutions to cater for legal challenges in the region.

In order to meet regional integration as defined by the GATT/WTO and the AEC instruments and implicate all Great Lakes Region stakeholders in the process, this Mini-thesis undertake the challenge of formulating several recommendations in the next chapter. These recommendations open potential fields of thinking and actions for further researches and decision makers' resolutions for the Great Lakes Region.



CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

This Chapter will attempt to identify ways through which the challenges posed by legal impediments to the Great Lakes Region integration provisions in the Economic Community of the Great Lakes Countries (ECGLC) and the International Conference of the Great Lakes Region (ICGLR) mechanisms and instruments may be addressed. A critical analysis of these instruments and mechanisms has been done and it has revealed that many obstacles hinder effective integration and development within the Great Lakes Region. The numerous calls from the GoFs and different investors, as well as civil society groups for a revision of the Great Lakes Region instruments are a clear indication that most countries and partners are not satisfied with their overlapping provisions and unresolved legal issues.

The first section of this chapter elaborates on ways to overcome these impediments as a set of conclusions. The second section contains recommendations, specifically with regard to regional integration engaging communities for sustainable development.

5.2. Conclusions

The brief historical examination of regional integration in general, and in particular, in the Great Lakes Region instruments, provided in Chapter 2, forms the basis for the conclusion that regional integration was initiated in response to concerns over the potential marginalisation of Africa and the Great Lakes Region. Its political mission has been the major challenge in the region's integration process. The integrative instruments in the Great Lakes Region had their roots in this political and historic turbulence.

In fact, as above described, in analysing 'the regional integration agreements as a bilateral or regional agreement not limited to a regional trade arrangement, as it pursues an economic integration agenda, *inter alia*, through the harmonisation of diverse domestic policies' and it is submitted that regional integration without policy harmonisation leads to a dead end.²⁵³

The Great Lakes Region Member States have been reluctant to take bold steps for regional integration by relying on the sovereignty of their States. They fear losing their

²⁵³ Refer to Chapter 2.3.2.1

sovereignty without tangible compensation. Effectively, once Member States have lost their sovereignty one would no longer be concerned within regional integration as recommended by Article XXIV GATT but, instead, there will be a single unit or a form of single Member State whose internal constitutional divisions would be irrelevant to GATT law. Thus a bold step in the integration process is the corollary of the guarantees provided by Community law to protect different States interests.

This Mini-thesis brought to light other relevant findings which follow in the next paragraphs.

The impact of political and security issues which prevailed prior to the introduction and undertaking of regional integration in the Great Lakes Region has distorted its development and gains, and provided for by side-lining of the rule of law and the pursuit of the personal ambitions of the elite and different administrative superstructure. The quasi collapse of the ECGLC common agencies is an illustration. It went bankrupt as a result of embezzlement of funds and equipment, without anyone being criminally charged.²⁵⁴ To achieve successful regional integration, domestic policy reform in the participating countries has to be effective with a basis in domestication of regional instruments. As long as misguided incentive systems, which have the potential to distort the pattern of production and trade, have been put in place, there will also be much at stake for successful regional integration.

The ECGLC-ICGLR partial bipartite agreement was signed in 2010, while the common infrastructure revival was decided in 2006 but without any detailed legal backing. And the real integration schemes of the ICGLR can be pointed out as lacking originality by virtue of being based on promised eventual foreign direct investments and grants. In this respect, this Mini-thesis highlights the fact that the projects of the Nairobi Pact are lacking originality and responsibility. They have to be implemented by the ECGLC and the African Development Bank (AfDB) without even being consulted.²⁵⁵ They rely substantially on international lobbying and non-defined regional coordination for their implementation. It can be assumed that the ICGLR regional integration is being seen as a stumbling block to, rather than as a stimulus for region integration.

²⁵⁴ Refer to Chapter 3.6.4.

²⁵⁵ Refer to Chapter 4.3 and Chapter 3.6.

Nonetheless, the ICGLR Pact has reaffirmed the importance of ECGLC common infrastructures in providing peace, security and development in the Great Lakes Region. Regional integration requires its main financial resources to come from the region and additional ones from partners. Partners' financial resources have always unacceptable conditions attached, but local financial assistance reaffirms Member States sovereignty and freedom. Regional financial mobilisation is the key to integration and its sustainability.

The ICGLR Pact can be commended for drawing attention to the need, in regional law, for measures to address gender equality and women's rights, by establishing National Coordination Mechanisms and Collaborative Mechanisms (NCMCM), and develop a Programme of Action for Democracy and Good Governance (PADGG) for example, but it is questionable whether a simple declaration of intent, and not granting individual rights to 'access to justice', was the correct way of avoiding certain regional sensibilities. It does not appear, for example, that the inclusion of gender equality and women's rights protection, IDPs rights and regional integration in the Pact was based on any clear research on or scientific knowledge of the extent, nature and scope of the phenomenon. For IDPs and refugee rights to be efficiently protected, within Community Law, provision should be made for domestication of these provisions and institutions empowered to discharge these mandates. These rights require regional appellate institutions which have the duty of overseeing Member States' performance and are a regional legal recourse body.

The two regional integration organisations remain inter-state forums excluding individuals, irrespective of the fact that individuals are keys to countries rapprochement and integration.

The Great Lakes Region is in crucial need of capacities and competencies with regard to regional integration in order to manage the overlapping integrations institutions. Member State institutions also need expertise in managing the overlapped instruments in order to avoid conflict of interests and to be able to intervene efficiently when the need arises.

For these reasons, I would argue that the ICGLR and ECGLC bipartite for regional integration seeks the co-operation from contradictions – it demonstrates genuine concern for regional integration and its impacts on the Great Lakes Region and its population, but fails to tackle the several obstacles and ends up being itself being another obstacle. It includes new and innovative methods for implementing the obligations contained in the Convention. But

its overall effectiveness and potential success are somewhat diluted by misguided and ill-conceived goals.

5.3 Recommendations

5.3.1 The role of the ICGLR and ECGLC

The Great Lakes Region is changing fast and so are its economic and political realities. Economic factors are increasingly determining political relationships in the region. Many other trading blocs are examples of how regional and national laws are being accommodated in favour of increased economic benefits and opportunities. In order to reap the gains of regional integration, the ICGLR and ECGLC have to upgrade their co-operation instruments for integration. This requirement can be realised by providing Member States with the necessary expertise in domesticating regional provisions within their national laws, by greater manifestation of political will.

With donors reluctant to fulfil their promises of additional funds for the Great Lakes Region's development, the ECGLC and the ICGLR should promote regional economic self-reliance first, by providing leadership in regional reconciliation and then regional financial solidarity. The Great Lakes Region Member States should realise that holding on to historic differences and conflicts could cost them their place in the global society given the many faceted challenges that are unfolding. They have to let go of the past and focus on the present in order to prepare a better future for all their populations.

The scope of action of the ECGLC and the ICGLR should be clarified by transferring matters that are economic to the ECGLC and those that are politic to the ICGLR, and by providing instruments in this respect. Member States should commit to more financial assistance to the BDEGL and the SFRD financial resources reversed into the BDEGL accounts to centralise the regional integration of financial means and its co-ordination. Initiatives related to each field should be the responsibility of determined organisations with adequate means.

The need for the integration of human rights and property ownership within the ECGLC and ICGLR ambit should be one of the region's main priorities, in the form of a regional judicial institution. The regional judicial institution should be established and have appellate jurisdiction. Another need which calls for a regional judicial institution is that of delivering 'preliminary reference proceedings' on trade and human rights in the Great Lakes

Region. In respect of these matters, regional integration should be evaluated by reference to the fact that trade is the source of the revenue and development of the region, and that the defence of human rights is the basis of sustainable development.

5.3.2 The role of Member States

The Member States' role in regional integration is key to any action on development and progress. Development without Member States' involvement will lead to unsuccessful projects which are secondary, since States are the main actors in the international community today. Regional integration, today, engages parties with fewer attachments or links to sovereignty but more too regional solidarity. Thus, the essential actors in the international community have the monopoly of public power and are the only ones that have the capacity to engage with or disengage from the State with its different components.

Many international judicial institutions have competencies and jurisdiction over one or two Member States in the Great Lakes Region. OHADA and SADC judicial institutions have jurisdiction on DRC, and EAC's on Rwanda and Burundi. In the ICGLR, Member States jurisdictions are divided again between COMESA, SADC, OHADA and EAC judicial institutions. Harmonisation of competencies should be instituted in the region with Member States having to collaborate and put their expertise together, since conflicts over jurisdiction will undermine any judicial proceedings or initiatives. National judicial institutions are divided over any loyalty due to any of these judicial institutions and their instruments. They resolve the jurisdiction's issues by inhibiting these facts and focussing on applying national laws and the mechanisms of regional integration and their instruments are victims of the lack of law translation. This Mini-thesis adopts Oppong's call for the following:

'Law translation' and insists on the fact that 'the absence of law translation creates a disjunction between the community and national legal systems. It leads to the alienation of natural and legal persons from the economic integration processes and their benefits. Generally, it undermines the effectiveness of economic integration.'²⁵⁶

This Mini-thesis calls for the establishment or the activation of community law translation processes in the Great Lakes Region. It stands for effectively translating community law within Member States national legal systems.

²⁵⁶ Oppong F R (2008) 1.

5.3.3 The role of individuals

Generally individuals are united within various Non-Governmental Organisations (NGOs) and other stakeholders. They expect to gain from regional integration involving their Member States. In this respect, direct applicability of Great Lakes Region instruments is instated by Member States' constitutions (ECGLC).

This Mini-thesis reiterates the call for 'community law's direct effects'²⁵⁷ in the Great Lakes Region henceforth, as posited by Oppong.²⁵⁸ The Great Lakes Region integrative instruments should include direct effect clauses for the benefit of individuals and procedures to be followed by different national courts in this respect.

The Great Lakes Region integrative instruments should integrate individual human rights provisions and protection within their ambit. Regional integration at individuals' expenses lacks orientation, its success is compromised, and it also jeopardises the possible achievement of the aims of the communities.

Besides focussing only on IDPs with a Protocol, the Great Lakes Region should have a broader protocol on displaced persons. The region has not only internally displaced persons from one point to another, but has also displaced persons from one country to another or others. Their rights and issues should be considered, but are often missing from laws and policies on displacement, as measures for addressing the long-term sustainability of their return and resettlement. Provisions should also cover different host communities and families, who often bear a large burden in assisting. Furthermore, additional means for combatting discrimination against any displaced person should be taken care of.

The Parliaments of Great Lakes Region Member States should enact national legislation to domesticate regional integration instruments following regional legal framework for their implementation within national legal systems. Until now, many Member States have adopted a policy of wait and see instead of complete commitment to regional integration organisations and their instruments. The NGOs and civil society organisations should contribute to addressing challenges by working with ECGLC and ICGLR committees

²⁵⁷ Craig PP 'Once upon a Time in the West: direct effect and the federalisation of EEC law (1992) 12 Oxford Journal of Legal Studies Volume 453.

²⁵⁸ See Oppong FR (2008) 7 Defines direct effects: The direct effect of community law enables individuals to invoke community law before national courts. It allows national courts to use community law as an independent, direct and autonomous basis of a decision. It turns national courts and persons who litigate before them into private enforcers of community law. It brings 'home' to persons rights created by the community.

of experts and the relevant authorities in each Member State in order to tackle challenges and achieve sustainable peace.



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