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**THE LEGAL ASPECTS OF ECONOMIC INTEGRATION IN AFRICA IN THE  
FIELD OF TRANSPORT AND COMMUNICATION WITHIN COMESA**

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**Authors:**

**LUBELE MASENGO Pierre<sup>1</sup>**

**Address For correspondence:**

<sup>1</sup>Superior Institute of Social Studies (ISES), Lubumbashi, DRC

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## 1. INTRODUCTION

Since the establishment of the Lagos Plan of Action and especially after the adoption of the Treaty Establishing the African Economic Community in Abidjan in 1981, the trend of efforts to achieve sustainable development has been the creation of international, sub-regional organizations and even strengthening those that existed before.

It is in this logic that Lagos and Abidjan that Southern and Eastern Africa has a common market to replace the preferential exchange zone in acronym ZEP which, like other international organizations will make development its battle horse and its realization is through cooperation in several areas including transport. The Treaty Establishing the Common Market for Eastern and Southern Africa was signed in 1993 in Kampala by 20 states. To date, COMESA is the common market of Eastern and Southern Africa.

Indeed, this common market for Southern and Eastern Africa (COMESA) has set itself several objectives as set out in Article 3, points a, b, c, e and f of the Treaty establishing it, which had was signed on 08 December 1994 in Lilongwe, Malawi. Including that of creating a customs Union between his twenty-one countries.

It should be noted that COMESA works for the achievement of growth and sustainable development of member states and the promotion of joint development in all areas of economic action. In other words, COMESA aims at the economic integration of its member states through the intensification of trade, which is done through transport because what is produced or what is intended for commercialization can not reach another point than by the transport company.

The treaty establishing COMESA was signed in November 1993 and ratified on 08 December 1994. As we can see, the regulation of transport and communication is one of the major concerns of relations between States. And closer to us there are international structures whose purpose is cooperation in all areas for integration. It understood that integration or cooperation can only be done on the basis of the development of means of transport. For example, the Southern African Development Community (SADEC) is headquartered in GABORONE BOTSUANA, the Organization for the Harmonization of Business in Africa (OHADA). And as far as we are concerned, COMESA can not do without transport and communication as well as economic integration in the space of its member states.

Indeed, Article 4, paragraph 2, to the point a, b and c it says:

- ❖ Promote cooperation between them in order to facilitate the production and exchange of goods and services and the movement of people;
- ❖ Establish regulations facilitating transit trade within the common market;
- ❖ Adapt a liability insurance plan. [1]

As in all these kinds of organizations; as far as COMESA is concerned, there is a problem of harmonization or approximation of the laws of the Member States.

The purpose of our study is to identify the legal aspects of this cooperation within COMESA through such a vital player in the life of States. We cited transportation and communications. We will therefore try to understand the implementation of the legal instruments for cooperation within COMESA in the field of transport and communications.

The means of transport as an instrument of cooperation within COMESA is the theme that we propose to analyze from a legal point of view. From the outset the theme refers to the legal cooperation of means of transport and communication. Indeed, since the 19<sup>th</sup> century and more precisely starting from the Vienna conference, the structures had been set up to allow the States to work together in the field of transport and communications and this within the framework of the river commission of the RHINE and DANUBE and this trend continued especially during the 20<sup>th</sup> century with the establishment of large structures such as the International Maritime Consultative Organization (IMCO) and the International Civil Aviation Organization, and today the OHADA by the Uniform Act on Transport and Communications to name just a few.

The major problem and even the object of this work is to reconcile this cooperation within COMESA with the rest of the international legislation in the field of international transport and communication.

The question we can ask ourselves with regard to the above is the question of how the adoption of the COMESA Transport and Communications Protocols and Treaty can be harmonized with international standards such as OHADA while the COMESA market compared to the rest of the world is a restricted framework (21 states). In other words, we wish to note the impact that the application of the principles enacted especially in Chapter XI of the COMESA Treaty on the principles governing commercial relations between States, in particular the principle of freedom of access to communications channels, the freedom to make acts of commerce, the principle of technical cooperation and the principle of cooperation concerning municipalities.

The COMESA treaty as well as the different protocols on transport and communications would not violate the principles and standards governing the transport of communication in the world.

Except on a specific point of Article 84 enjoys the COMESA treaty which states:

To accord special treatment to coastal and island Member States in respect of their application of the provisions of this Chapter.

We believe that COMESA member states that have decided to take steps to ratify or accede to international conventions should first welcome a moratorium or make the principle or clause of the status quo that will enable them to resolve domestic legal problems. Before engaging on the international scene that he can recognize it, poses a problem especially in third world countries.

Indeed, foreign trade is liberal, now in all regions of the world, but trade regimes remain substantially more complex and more restrictive in Africa than elsewhere.

We believe with Evangelos Calamitis that COMESA standards should accelerate the liberalization of international trade in order to improve the competitiveness of domestic producers and increase the pace of Africa's integration into the world economy. [2]

## **2. TRANSPORT AND INTERNATIONAL COMMUNICATION LAW**

Transport, it is known to all of us is this set of means that allow people and their property to be moved from one point to another is a locality, a city, a country of a region...

If in internal law the problem can arise easily because the State having the exclusivity on its territory, the question is presented differently in the relations between two states or between several states. Thus instead of studying the means of transport such as the car, the van, the truck, the train, the ship or the aircraft, we will put emphasis in this work on the transport connection ways and communications that International Law calls the spaces of international use.

In this section, we will highlight the merits of the Law of Communications, its principles and sources before discussing the frameworks for applying these rules governing international transport and communications.

### **2. 1. The merits of international communication law**

To speak today of the legitimacy of the International Law of communication refers to the analysis or rather the research of the place and the role of the International Law of communication in relation to the international society. And Pierre Marie Dupuy offers us three types of lawyers and it will be up to us after the presented assets, to choose one of these categories to say what the International Law of communication will play on the ways of connection between States.

For Pierre Marie Dupuy so he can make the difference between:

This trainer lawyer who is legislator and negotiator of contracts and agreements, whose function is to make the law in the sense that it is created standards. Then there is the practicing lawyer, whose task is not to create but to apply the law and finally there is the specialist jurist of the legal science. His point of view is subordinated neither to the imperative of creation nor to that of the application of the Law by intrinsic, he has for task to analyze the technical instruments, to identify the contents to better define its springs and its implications. [3]

And we do not want to be a trainer or a practitioner, let alone a specialist in Legal Science. But we can say that International Law of Communication has purposes and functions in international society.

Indeed, like the International Public Law from which it draws its substance, the International Law of Communication is constituted by all the norms and institutions intended to govern the international society, applies in principle to the States, by extension to the functional

groupings. Of a number of them with autonomous personality, namely international organizations.

Like public international law, the international right of communication which is a part of it applies to the international society. Let us note that the international law of communication is useful for the international society, in the sense that nothing then nothing can proceed well if the States or the other components did not manage to connect and it is by the connection of ways of communication that the States connect or develop their relations and we can therefore say that the validity of the Law which is defined by Professor Marie MERLE as being a regime without obligation or sanction according to the formula applied to a certain moral conception.[4]

International cooperation can not therefore be done without rights, and international communication law allows states to solve their problems related to the movement of people, services and goods from one place to another. The foregoing therefore allows us to answer the question of why does the International Law of Communication exist?

The answer is simple because it is for the Law to organize international cooperation by a number of rules and principles in the following areas: air transport, land transport and maritime transport.

International communication law is therefore the logic for states to meet the needs that arise for the substance and force them to be in contact with each other, because today as yesterday, the economy of a State can not be developed by living in autarky.

In definitive we can say that the International Law of Communication has a role of regulator in that the stakes of the international cooperation are such that the one and the other components are such, the other component of the society can not agree in the same way and at the same time on the attitudes to be taken especially when the interests of one are contradictory to those of others. It is therefore to avoid in certain circumstances that the legislation of a State comes to find the smooth running of international communication, it was therefore necessary to set up internal rules hinder international rules. And as part of our work, we will look at how the COMESA rules complement those of the entire international community.

### **3. ESSENTIAL PRINCIPLES GOVERNING ECONOMIC RELATIONS BETWEEN STATES**

To speak of the International Law of Communication supposes especially the cooperation between States in the field of transport and communications. That is why we have thought it useful to review the essential principles governing relations between States, especially in the economic sphere.

In general, in the field of transport and communications, there are two types of principles governing relations between States. On the one hand there is the principle of freedom and on the other hand the principle of international cooperation.

### **a) Principle of freedom**

International trade or exchanges between States will not be possible, in view of principles that govern international relations, including the few such as the principle of sovereign equality that Professor Jean Marie Dupuy considers as well as the new States as a claiming the latter in view of their situation in international relations, where they arrived only in the 1960.

And Professor Pierre-Marie Dupuy notes that it is the last arrived in the international society which has to have the experience. However, they are more prevalent as sovereign states to assert their independence or identity. [5]

It was therefore difficult but not impossible for this category of state to accept the principle of free trade because it was necessary for states to first affirm their identities. The principle of freedom in international communication runs up against the susceptibilities of States wishing to defend their territorial space to defend themselves or to use exclusively the international means of communication for their own ends. The principle of freedom means that the international channels of communication are used in a non-discriminatory manner for all States, for example, States are not forbidden to collect taxes or customs duties, but should not be excessive because we will fall there, in what the international trade experts call the non-tariff customs barrier.

The international transport operation is intense so that the trip is profitable and unfolds freely, it is necessary that the carrier gets a better filling of his vehicle in merchandise and personnel. Often vehicles in international transport do not suffer from this requirement. However ships and planes are forced to go abroad where they have to ship and unload goods and people.

These operations assume the principle of freedom which implies a profound idea of freedom of commerce.

Today more than yesterday, the principle of freedom is developing in a more open world, a world of connection or a world that can be described as a global village. The freedom of access to the lines of communication concerns first of all the communication by sea where it supposes that the ships must have free access to the sea, which is to say with the internal waters, the territorial ones, with the contiguous sea and the high seas. This freedom also applies to maritime communications on international channels, which enjoy a special legal status, such as the Kiet Canal, Panama Canal, Suez Canal, Corene Canal, Eslant Canal...

The same principle of freedom also applies to air communication and space law provides for the use of space. That is, air law applies to stopovers and companies that operate air traffic and even at the ticket level. About the air ticket, it is the Warsaw Convention signed 12 October 1925, amended by the convention of The Hague signed on 28 September 1955.

As we can see, freedom is a fundamental principle in transportation whether territorial (rail and road) air and sea...

Let us, however, point out that freedom in the field of international communication is to be situated on two levels. The first freedom is that which allows access to the communications channels and the second is the freedom to do the acts of commerce.

### **b) Principle of international cooperation**

The fields of communication are very broad; it is difficult for a state taken in isolation can solve all the problems related to transport. Thus, the principle of international cooperation requires states to consult one another in order to set up and organize international communications in common, since some communications work is expensive and only one would be difficult for one State to cope with. The international transport operation involves a number of countries and it is therefore necessary in this case that intense cooperation be established.

Take the example of the transport of goods from country A to country C through country B, involves three states and if the laws of the latter were contradictory or ambiguous transport would encroach. This is a case of transit: there is also sabotage transport of people, goods and even service from a place in State A to another place in the same State but through the space of state B.

All this supposes a cordial agreement between Eta. That is, setting up mechanism or rules for achieving common interest.

International cooperation is carried out by tracing routes, harmonization and signaling conditions; the rules governing international communication must be uniform. For example rail width, road signs, maritime transport marking system and airport markings. Cooperation is done in different ways, either bilaterally or multilaterally. But in the context of transport and communications, we believe that the norm governing this field are defined within a wider framework, since the development of means of communication and such as these are carried out in an extremely rapid manner and presupposes a wider concentration.

The signaling systems affect all the states of the world even if in some countries the driving of the vehicles is left but it rolls on the right or it is right and one rolls on the left.

There is one exception to this principle, however, that even if the organization is a specialist in a given field, it has collaboration with the Member States. This is therefore shared competence and it is in this logic that the States are obliged to participate financially in the realization of certain projects in the field of transport especially.

Regarding the principles of airlines, for example, the International Civil Aviation Organization has planned the joint financing of intelligence sources. And in the framework of COMESA, which is the subject of our work, we can give the example of setting up a telecommunication company named as such and all that implies cooperation between States.

### **c) Core Principles of COMESA**

COMESA member States have come to observe the following fundamental principles:

- The equality and interdependence of the Member States;
- Solidarity and collective self-reliance among member states;
- Cooperation between Member States on political harmonization and integration of programs within the Member States;
- The renaissance, promotion and protection of African rights of human and peoples 'rights conform to the provisions of the African Charter of Human and Peoples' Rights;
- Accountability, economic justice and popular participation in development;
- Respect for the rule of law.
- The promotion and maintenance of a system of democratic governments in each member state;
- Maintaining and consolidating peace and regional stability through the promotion and strengthening of good neighborly politics;
- Peaceful settlement of differences between Member States by promoting active cooperation between neighboring countries and promoting a peaceful environment as a precondition for their development.

### **COMESA structures: 8 bodies:**

The Conference of Heads of State, the Council of Ministers, the Court of Justice, the Committee of Governors of Central Banks, the Intergovernmental Committee, the Technical Committees, the General Secretariat and the Secretariat, the Advisory Committee of the Business Community and interest groups.

## **4. TRANSPORT AND COMMUNICATIONS**

We have just developed the International Law of Communication, that is to say the one that governs transport and communications. But the development is not complete. Because, we did not say exactly what means transport and communications and also their different kinds.

### **a) Meaning and content of transport and communications**

Transport and communications belong to the human sciences, that is to say sciences where it is difficult to find unanimity around the meaning that can be given to a concept, in fact, it is easier to say transport and even communications, but it becomes difficult to give meaning that could be unanimous.

It is in this logic that we will try our way of saying or rather to deduce something from some definitions that we have encountered.



As for the Petit Robert, transportation is a vast reality that can mean assignment of a right or a claim, it also means moving or sending by a particular process or the movement of things or people on a fairly long distance and by special means, usually through an intermediary, or for commercial purposes, economic.[6]

Another definition is provided by John Hatier, who defines transportation as an economic activity that is normally consumed at the very moment of its production, as opposed to economic goods that are more tangible. [7]

From the definition of Hatier we will remember that transport is a service rendered to an individual, a group, an organization, a state etc...

Transport is this set of economic activities intended to move people and their goods from one place to another, and as part of this work, we are more interested in moving a country to another country of people and of their property. Both definitions remind us that we can only talk about transportation when we need it, but there has to be a good or a person to make a trip and the definitions focus on places. The first is where the good or the person is, and the second is where the person is to be transported.

Here appears the concept of carrier which KANGAMINA KIS KABALA is the owner, the tenant or the driver of the machine which allows moving the goods as well as the people.[8]

Transport, by this definition rejoices the conception of the Petit Robert which says that it is an assignment of right or of claim, here there is a contract between the one who must transport and the one which one transports or which one must transport goods, but transportation can be done in many ways.

## **b) Types of transport**

It is the network that gives a qualifier to transport. It is also that by road, the transport is said road, by railways we speak of rail transport, by sea water and by air, air transport.

As far as we are concerned and because we are talking about International Communication Law, there are certain types of transport that will not affect us more because they are governed by Internal Law.

### **- Road transport**

The legal aspects of international road transport we will present and analyze in the second part of this work but we must remember that the International Law of Communication focuses on the following aspects:

- ❖ The unification of rules concerning civil liability and compulsory insurance of the automobile;
- ❖ The establishment of uniform rules by the control of car traffic;
- ❖ The unification of signaling methods;
- ❖ The simplification of the granting of facilities to allow temporary duty-free admission for vehicles and for goods transported in transit.

- ***Rail transport***

International law on rail transport contains several principles, but the principle is that of the internal regulation of rail marketing and which includes the following elements:

- ❖ The determination of the guiding principles, which govern the international regime of railways;
- ❖ The technical regulation of transport itself;
- ❖ Network coordination and tariff setting.

- ***Maritime transport***

From the physical point of view, the sea is characterized by the unity of space, the unity which unfortunately is not reflected in the legal origin which governs it because it comprises three distinct domains also subject to three different regimes.

It concerns the high seas, the internal principle of which is liberty, the internal waters whose principle is that of the sovereignty of the coastal State, and the territorial sea whose principle is to say that the State resident enjoys sovereignty in the territorial sea subject to the obligation to pass non-offensive foreign vessels.

- ***Air Transport***

It is the domain of internal transportation governed by two principles, that of sovereignty when the aircraft flies space and the principle of freedom of air in the space between atmospheres.

## **5. OF INTEGRATION**

We have opted to analyze the legal aspects of transport and communications cooperation within COMESA, but this cooperation is part of a global objective of all African international organizations since the adoption of the Action Plan. of Lagos and especially the launch of the African Common Market from Abuja.

Indeed, if today we are in a hurry to say a word about transport and communications within COMESA, it is simply because the way was marked since 1981 chapter V of the Action Plan of Lagos carried on transport and communications as a strategy for the integration of Africa as a whole. [9]

Note that contemporary international relations are dominated by the so-called phenomenon of integration. And it would not be surprising to think of this reality existing only some time ago.

But the different writings on integration prove the opposite; this is the case of Professor GANIDEE who overcomes in the 12<sup>th</sup> century quoting EMERIC CRUCE who reflects on economic integration. [10]

***a) Notion of integration***

Integration in a general way is the sharing of state policies to achieve development, but integration is a global concept that itself can have a political and legal character. The complexity of the phenomenon has led us to think carefully to avoid any possible confusion.

***b) Meaning and content of integration***

Integration comes from the verb integrate and which means to integrate a given economic whole in a time and governed by a defined system of incentives.

Professor BIYOYA MAKUTU quoted the authors of a book published by the Development Center of the Organization for Economic Co-operation and Development in 1969, which defines integration as a process which makes it possible to gradually eliminate discrimination between two or more countries. Those exist at the borders of nations. [11]

Any clarification that the integration in question here concerns only those States which for one reason or another seek to put their means together to solve one or more problems of common interest.

The economist FRANCOIS PERROUX already writing in the 60s that integration is an act of integration, gathering elements to form a whole or it increases the cohesion of an already existing.[12]

***c) Integration within COMESA***

The 1<sup>st</sup> contributor to the creation of wealth in the region (36% of GDP) comes in 4th place for regional integration followed by Kenya in Sudan and Libya. Regarding a very good note for productive integration and free movement of people it is Kenya followed by Zambia, Uganda and Egypt.

The index of integration in Africa summarizes 5 dimensions:

- Commercial integration;
- Regional infrastructure;
- Productive integration;
- Free movement of people;
- Financial integration and convergence of macroeconomic policies.

#### ***d) Legal approach to international integration***

International integration we said a framework for the international organization and its legal study can only refer to it.

Indeed, this approach seeks to discover justifications from the point of view of the law, the existence of international integration, which is possible only when it refers to an international institution.

Law retains three characteristic features of international integration, namely, the will to cooperate, the existence of an organic structure and the competence of the institution.

With regard to the will to exist, the law recognizes this prerogative, which should normally offend the sovereignty and independence of states, but since it involves cooperation in one or more areas, states sometimes make a sacrifice.

As to the existence of the permanent organs of the international organization, in all the tendencies of integration recognize that it is not possible to hope for any integration when no centers exist. Which in turn make decisions on behalf of all states.

With regard to competence, it is the object of international integration which limits the power of the institutional framework, it would be improper for an organization.

#### **CONCLUSION**

We will give the essential of what constituted the meanders of our work.

Thus at the end of this study on the legal aspects of economic integration in Africa in the field of transport and communication within COMESA. The big problem is how to reconcile this cooperation within COMESA with the rest of the international legislation in the field of international transport and communications. How the adoption of the COMESA protocols and treaty on transport and communication align with international standards such as those of OHADA, SADEC...

In view of this problem, the following reflection has been formed as Hypothesis:

The multiplicity of African sub-regional organizations was desired by the fathers of independence with the aim of starting from a sub-regional integration in order to achieve the regional integration in general of the African continent.

Today we see that sub-regional organizations are a brake on the regional organization of Africa at this time, and the major continental issues are multiplying.

The blockage to development engendered by these sub-regional organizations is justified by several mechanisms, including the existence of several organizations in the same sub-region with different ideologies, which makes the states found in these organizations different.

There is also the language that is a brake because it is a vector of communication. If we do not know how to understand ourselves, we can not work together.

Added to this is the instability of the internal political regions of the COMESA states and the struggle for leadership, which constitutes a blockage to integration, the lack of complementarity of the economies of the member states, despite the fact that they advocate common market, they do not have anything to exchange because they produce almost the same products. The lack of infrastructure, the multiplicity of currency areas that poses the problem of currency connectivity.

COMESA member states must overcome the divergence of national languages and sentiments in favor of the global sentiment that favors the unity of their under-organization.

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