CHAPTER 6

General Principles Governing EAC Integration

Khoti Chilomba Kamanga and Ally Possi

6.1 Introduction

This chapter expounds on the general principles which govern the functioning and activities of the East African Community (EAC), while also reflecting on the European Union (EU) integration experience. From the outset, it is important to point out that the ‘general principles’ are a source of law as well as guidelines to which states in an integration arrangement should adhere. Thus, this chapter is preoccupied with the dual tasks of mapping the principles of the EAC, as set out in the Treaty for the Establishment of the East African Community (the Treaty), as well as examining the broader legal import of these principles. The justification for such an examination is the role these principles play in promoting universally acceptable tenets of good governance, and more importantly, as a source of law, a dispute resolution tool. Central to this chapter is the thesis that beyond and above individual, specific and binding legal rules found in treaties, on statute books, regulations, by-laws, and case law, there are normative prepositions of a more abstract nature, and of ‘general applicability’, namely general principles.

6.2 General Principles

It has been observed that general principles perform a threefold function, as they “operate as aids to interpretation, as grounds for review, and as rules of law, breach of which may give rise to tortuous liability.” As a ‘source of law’, a general principle serves a ‘gap-filling’ function to the extent that a lacuna arises from the fact that a situation may arise which is not governed by a rule of law, be it statutory or judicial. However, the term “general principles”, as

1 See also EU Chapter 6, particularly on the development of fundamental rights as General Principles of EU law in this regard.
2 T. Tridimas (2006), The General Principles of EU Law (2nd ed), Oxford: Oxford University Press, p. 29.
3 Ibid. p. 17.
used in this chapter, draws inspiration from the Statute of the International Court of Justice (ICJ). The ICJ Statute, an appendage to the United Nations (UN) Charter, is particularly notable for the direction it gives to the "principal judicial organ" of the UN, in respect of applicable law whenever the ICJ is carrying out its adjudication function. The pertinent part of the ICJ Statute enjoins the Court to have recourse, among others, to "general principles of law recognized by civilized nations."4

Unfortunately, the ICJ Statute fails to define or characterize such 'general principles'. Therefore, this task inevitably falls on international judicial bodies and experts. The adoption of the UN Declaration on Principles of International Law was one response to the resulting lacuna.5 Experts from the United States of America also joined the fray, to argue that the term 'general principles' as used by the ICJ Statute could mean any of the following five categories:

a) Principles of municipal law recognized by civilized nations;
b) General principles of law derived from the specific nature of the international community;
c) Principles intrinsic to the idea of law and basic to all legal systems;
d) Principles valid through all kinds of societies in relationship of hierarchy and coordination; and
e) Principles of justice founded on the very nature of man as a rational and social being.6

However, in the case of the EAC, as well as the EU, the relevant general principles are the source of less controversy, having been either captured by statute, or the subject of numerous judicial pronouncements. The situation in the EU is striking in that many of the principles under discussion have been developed by the case law of the European Court of Justice (ECJ) rather than finding an “explicit” formal basis in the Treaties. Conversely, in the EAC many of these principles are formally prescribed by the Treaty, even though there is

4 Article 38, ICJ Statute, 1945.
5 More precisely, ‘Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations’ reproduced, among others, in I. Brownlie (ed) (1995), Basic Documents in International Law (4th ed), pp. 36–45.
6 L.F. Damrosch et als. (2001), International Law: Cases and Materials (4th ed), St Paul, Minnesota: American Casebook Series, p. 118.
of course also scope for unwritten principles to be discovered and developed by the EACJ.  

6.3 General Principles Under the EAC Treaty

Upon examination of the Treaty, it is easy for one to conclude that there is a generous intention for EAC integration to be governed by the enshrined Treaty principles. These principles may form a source of law as well as impact upon policy guidelines, with which Partner States should comply. However, it is fair to comment that as there are numerous provisions dealing with general principles, there is a superfluous restatement and repetition of principles to the point of generating incoherence. The structure of the principles within the Treaty is inconsistent, as for instance, some of the principles are stated neatly and explicitly, while others are implicit and, while some form part of the main body of the Treaty, others only find articulation in the preambles.

As indicated above, there are instances of repetition. In the preambles of the Treaty, one encounters the solemn commitment to “adhere . . . to the fundamental and operational principles that shall govern the achievement of the objectives [of the Treaty], and to the principles of international law governing relationships between sovereign States.” Moreover, provisions which directly and explicitly dedicate themselves to articulating principles of EAC law, are to be found in Articles 6 and 7 of the EAC Treaty. The former carries the title ‘Fundamental Principles’, whereas the latter, enumerates what are termed ‘Operational Principles’. Interestingly, neither of the two Articles proclaims itself to be an exhaustive statement of principles of EAC law.

It is equally important to note the rationale for classifying the principles into the two respective categories. Whereas the ‘Fundamental Principles’ are of general applicability, the ‘Operational Principles’ are meant to ‘govern the

7 M.E. Mendez-Pinedo (2009), EC and EEA Law: A Comparative Study of the Effectiveness of European Law, Amsterdam: Europa Law Publishing, p. 15.
8 According to our count there are no less than 9 provisions, most notably, Articles 5, 6 and 7 dedicated to the issue of general principles.
9 Article 7 (2) substantially repeats the contents of Article 6 (d) with questionable added value.
10 Both provisions contain the important refrain that the respective list “shall include . . .” the following principles.
practical achievement of the objectives’ of the EAC, a situation suggesting that the former, enjoy a comparatively superior normative status to the latter. If this truly is the case, and we believe that to be so, the overlap between the contents of Article 6 (d) and, Article 7 (2) is rather unfortunate. On the one hand Article 6 (d) reads as follows:

The fundamental principles that shall govern the achievement of the objectives of the Community by the Partner States shall include [...] Good governance including adherence to the principles of democracy, rule of law, accountability, transparency, social justice, equal opportunities, gender equality as well as the recognition, promotion and protection of human and peoples’ rights in accordance with the provisions of the African Charter on Human and Peoples’ Rights.

On the other hand Article 7 (2) reads, verbatim:

... Partner States undertake to abide by the principles of good governance, including adherence to the principles of democracy, the rule of law, social justice and the maintenance of universally accepted standards of human rights.

Visibly, each of the two provisions makes reference to ‘good governance’, ‘democracy’, ‘rule of law’, ‘social justice’, and ‘human rights’, with no apparent justification for the repetition. Only the issues of “equal opportunities” and “gender equality” are unique to Article 6 (d). Our understanding of the basic and primary justification for isolating the general principles outlined in Article 6, and the ‘Operational Principles’ as set out in Article 7, is to underscore the wider, general applicability of principles in the former category. It therefore is clearly superfluous, to have the same principles articulated in Article 7, since principles of general applicability would apply to any isolated, specific matter anyway. Finally, and perhaps more critically, this repetition leaves us questioning the genuine rationale for the dichotomy of the classification and the attendant legal ambiguity.

11 See the opening paragraph of Articles 6, in contrast to Article 7 (1).
12 Art 6 (d) of the EAC Treaty.
13 Art 7 (2) of the EAC Treaty.
6.4 The Principle of Subsidiarity

In recent times, the concept of subsidiarity has gained significant weight and attention within the sphere of international institutional law. The concept implies the presence of authority between different levels of governance, in which the decision making process should start from the lowest level capable of achieving the objectives set. In the process of regional integration, it is a common place to find Partner States within an integration bloc clinging-on to their sovereignty. In order to provide protection to such sovereignty against unnecessary action by the center, principles such as subsidiarity are adopted in the constitutive integration treaties.14

The principle of subsidiarity, therefore, forms a compromise on the sensitive themes of state sovereignty and a supranational form of a regional integration block.15 In the law-making process, subsidiarity provides guidance on the legislative powers of an integration bloc in areas in which both the bloc and the Partner States have common legislative competences. In the EAC, the primary goal of the subsidiarity principle is to ensure decisions, regarding an integration activity, originate from the people; in line with the ‘people-centered’ integration spirit. In essence, the principle of subsidiarity reaffirms democratic principles, within the context of regional integration.16

While relevant, subsidiarity as envisaged by the EAC Partner States’ federal regime should be approached with caution. Of course the principle is an important component in the Treaty, overseeing the achievement of the objectives of the EAC as well as being a normative source of law. Undisputedly, subsidiarity sets the tune of interaction between the EAC and its Partner States. The Treaty defines subsidiarity as a ‘principle which emphasises multilevel participation of a wide range of participants in the process of economic integration’.17 For achieving the objectives of the Community, Partner States are required to adhere to the principle of subsidiarity in all activities involving EAC integration.18 However, the Treaty definition of subsidiarity is not clear. The scope of

---

14 Historic, nationalist and economic factors cause states and their nationals to advance sovereign ideology overriding integration initiatives. See Ronald Tiersky, ‘Europe: International Crisis and the Future of Integration’ in Robert Tiersky (ed), Europe Today (2nd edn, Rowman & Littlefield Publishers Inc. 2004) 3.
15 Deborah Cass, ‘The Word that Saves Maastricht? The Principle of Subsidiarity and the Division of Powers within the European Community’ (1992) 29 C.M.L. Rev. 1107, 1116.
16 Olivia Barton ‘An analysis of the principle of subsidiarity in European Union law’ (2014) 2 North East Law Review 83, 84.
17 Art 1 of the EAC Treaty.
18 Art 7(1)(d) of the EAC Treaty.
its application, as well as judicial and political mechanisms for enforcing the principle are not defined by the Treaty.

In determining whether the principle has been duly adhered to by the EAC, it is important to note that major decisions impacting EAC integration have not been widely debated by Community citizens. Notably, EAC Partner States have shown early signs of violating the subsidiarity principle, by hastily amending the Treaty in 2007, without eliciting the opinion of Community citizens.19 This trend is contrary to the principle outlined in the EAC Treaty. It is clearly stated that for an ‘action to accomplish a legitimate government objective [it] should in principle be taken at the lowest level of government capable of effectively addressing the problem.’20 When looking at the functioning of the EACJ, there is a genuine question to be asked as to whether non-inclusion of domestic remedy requirement in the EACJ is within the spirit of the subsidiarity principle as provided in the EAC Treaty.

The principle has positives and negatives. It is easy to note that the subsidiarity principle legitimizes the Community for its citizens.21 It also smoothens the relationship between the Community and its Partner States. However, when the principle is subverted by Partner States for political reasons, it serves as a delaying tactic by Partner States unwilling to implement the Community agenda.

6.5 Variable Geometry

The principle of variable geometry allows Partner States in an integration bloc to implement integration projects at different paces. States within an integration arrangement are allowed to move-forward with integration activities, while leaving others to join at a later date.

As is the case with the principle of subsidiarity, the Treaty fails to clearly define the scope and applicability of variable geometry principle. The Treaty recognises the principle as a policy tool of ‘...flexibility which allows for

19 Henry Onoria ‘botched-up elections, treaty amendments and judicial independence in the East African Community’ (2010) 54 Journal of African Law 74, 88. See also the case of East African Law Society and 4 Others v. The Attorney General of Kenya and 3 Others, Reference No. 3 of 2007.
20 George A. Bermann 'Subsidiarity and the European Community' (1994) 17 Hastings Int'l & Comp. L. Rev. 97, 97.
21 Reimer von Borries & Malte Hauschild 'Implementing the subsidiarity principle' (1999) 5 Columbia Journal of Europe Law, 369, 369.
progression in co-operation among a sub-group of members in a larger integration scheme in a variety of areas and at different speeds. On a quick reading of the Treaty, the principle clashes with the requirement of consensus in the decision making process within the Summit and the Council of Ministers. This was evident when the Council of Ministers approached the EACJ to seek clarity on the scope of application of the variable geometry principle within the EAC.

It was clear that even the top-most officials of the Community could not contemplate the nature and scope on the implementation of one of the founding principles of the Community; a principle derived from their own wisdom. In the quest for an advisory opinion, the EACJ was called upon to clarify the application of the principle of variable geometry vis-à-vis the requirement of consensus in the decision making process of the EAC. The Court was of the view that, if diligently applied, the principle of variable geometry is in harmony with consensus, when deliberating on integration decisions. In clarifying, the EACJ stated:

The Court finds that the principle of variable geometry, as its definition suggests, is a strategy of implementation of Community decisions and not a decision making tool in itself. [...] The Court is of the opinion, therefore, that the principle of variable geometry can comfortably apply, and was intended, to guide the integration process and we find no reason or possibility for it to conflict with the requirement for consensus in decision-making.

---

22 Art 1 of the EAC Treaty. Variable geometry principle is also described under art 7(1)(e) of the EAC Treaty as ‘... the Principle of variable geometry which allows for progression in co-operation among groups within the Community for wider integration schemes in various fields and at different speeds.’

23 See art 12(3) of the EAC Treaty.

24 Art 15(4) of the EAC Treaty, subject to the Protocol on Decision-Making by the Council of 2001 under art 2(2), which provides that the decision of the Council is by simple majority, without disclosing the kinds of decisions to be reached by a simple majority.

25 In the matter of a request by the Council of Ministers of the East African Community for an Advisory Opinion, Application No. 1 2008, EACJ, First Instance Division.

26 In the matter of a request by the Council of Ministers of the East African Community for an Advisory Opinion, Application No. 1 2008, EACJ, First Instance Division, p. 29.

27 In the matter of a request by the Council of Ministers of the East African Community for an Advisory Opinion, Application No. 1 2008, EACJ, First Instance Division, p. 33.
The EACJ is simply of the position that the principle of variable geometry is a strategy in realising a decision, which Partner States may agree by consensus. Partner States may agree by consensus to implement certain integration projects, depending on the readiness of some members. It may happen that a particular state may choose to opt out in implementing an integration project, and join the rest at a suitable future time, or may decide to opt out altogether. The EACJ observed further that consensus in the realm of decision making process of the EAC does not imply unanimity, thus there is no need for veto power among Partner States.

The main aim of the principle of variable geometry is to ensure that the integration agenda proceeds, even if unwilling states are reluctant to implement integration activities. Moreover, it is a way of avoiding any internal conflicts by forcing unenthusiastic Partner States to implement a certain program or policy. Learning lessons from the failure of the defunct EAC, the principle attempts to address the issue of inequality among Partner States. However, when applied under political influence, this may lead to the fragmentation of the integration bloc. In 2013, invoking the principle of variable geometry, Kenya, Rwanda and Uganda, under the tag of ‘coalition of the willing’, held a series of meetings while excluding Burundi and Tanzania. The meetings considered issues relating to the Customs Union, Common Market implementation, regional investment, infrastructure development, and the removal of non-tariff barriers. The move by the three countries was not well-received by the citizens and leaders of Burundi and Tanzania. Furthermore, the principle is at risk of being used as an escape route by an unwilling state to implement integration projects under the shield of the principle of variable geometry.

---

28 Joshua M. Kivuva ‘East Africa’s dangerous dance with the past: Important lessons the new East African Community has not learned from the defunct’ (2014) 10 European Scientific Journal 359.
29 In the matter of a request by the Council of Ministers of the East African Community for an Advisory Opinion, Application No. 1 2008, EACJ, First Instance Division, p. 35.
30 James Thuo Gathi ‘African regional trade agreements as flexible legal regimes’ (2010) 35 N.C.J. Int’l L. & Com. Reg 571, 623.
31 African Development Bank Group ‘Is Variable Geometry Leading to the Fragmentation of Regional Integration in East Africa?’ http://www.afdb.org/en/blogs/integrating-africa/post/is-variable-geometry-leading-to-the-fragmentation-of-regional-integration-in-east-africa-12524/ (Accessed on 26 May 2016).
6.6 The Principle of Complementarity

The principle of complementarity has gained prominence in international criminal law following implementation of the Rome Statute. There are different methods through which the principle of complementarity is applied under international law. The principle delineates the relationship between international institutions and those at the domestic level. The principle of complementarity in the EAC Treaty has taken on an economic approach, namely trade complementarity. According to the Treaty, the principle ‘defines the extent to which economic variables support each other in economic activity’. The principle of complementarity in the EAC Treaty does not only cover the relationship between the Community itself and its Partner States, but also attempts to create a bridge between the work of the EAC and other African institutions performing activities and functions similar to those of the EAC. Therefore, EAC complementarity operates with regard to both national and other regional and international institutions. Similarly to the principle of complementarity as envisaged in the Rome Statute, EAC complementarity calls upon relevant institutions at the Community and local level to act, when and where their counterparts are unable or less equipped to do so.

6.7 Fundamental Rights as a General Principle of the EAC Law

Respect for human rights and fundamental freedoms is essential in forming strong regional integration. Under contemporary international institutional law, respect for human rights has developed to be an important integration principle. For instance, it is common to find an integration bloc imposing respect for human rights as one of the prerequisites for accession to the bloc.

The EAC Treaty expressly designates the “promotion and protection of human and peoples’ rights” as a ‘Fundamental Principle’ of the EAC. We also find, among the ‘Operational Principles’ of the EAC, the undertaking by Partner

---

32 See the Preamble and art 1 of the Rome Statute of the International Criminal Court, UN Doc. A/CONF. 183/9 (1998).
33 Xavier Philippe ‘The principles of universal jurisdiction and complementarity: how do the two= principles intermesh?’ (2006) 88 International Review of the Red-cross 375, 380.
34 Art 1 of the EAC Treaty.
35 See on this point also the gradual development of fundamental rights protection in the EU, that kept pace with the level of integration, as described in EU Chapter 6.
36 See for example Article 3 (3) (b) of the EAC Treaty.
States, to adhere to the “maintenance of universally accepted standards of human rights”. The legal principles are the source of EAC law, of which human rights, as they are protected by the Partner States and with the international treaties are incorporated in the EAC Treaty.\(^37\) However, when the EACJ started to receive cases concerning human rights allegations, the Partner States were not shy of vigorously opposing the binding nature of the principles within the EAC Treaty.\(^38\)

The EAC does not have its own human rights catalogue, and therefore, places its reliance on other international sources of rights. The African Charter on Human and Peoples’ Rights (ACHPR) is mentioned as one of the normative frameworks to be taken into account when conducting EAC activities,\(^39\) along with ‘universally accepted standards of human rights’.\(^40\) If the supremacy of the EAC law is firmly accorded by EAC Partner States, human rights norms in the Treaty have the potential of creating a Community with better human rights standards. In line with this objective, the EACJ itself is of the firm view that the mention of the ACHPR in the EAC Treaty ‘was not merely decorative of the Treaty’.\(^41\)

Sadly, however, the EAC Treaty has shied away from taking one important legal step towards giving life to the principle of fundamental rights. The EACJ’s jurisdiction in respect of ‘interpretation and application’ of the EAC Treaty is set out in a manner that is forthright and unequivocal, but not in regard to the question of human rights. The pertinent provision limiting the Court’s jurisdiction to determine human rights disputes reads:

\[
\text{The [EACJ] shall have such other original, appellate, human rights and other jurisdiction as will be determined by the Council at a suitable}\]

\(^37\) For a general discussion on principles and human rights in the EU, see Tanja Karakamisheva-Jovanovska ‘Legal principles versus fundamental rights post Lisbon’ (2013) 15 Rev. Eur. L. 41.

\(^38\) See for example the submissions of the Attorneys General in the cases of Mary Ariviza and Okatch Mondoh v. Attorney General of Kenya and Secretary General of the East African Community, Reference No. 7 of 2010 (First Instance Division); James Katabazi and Others v. Secretary General of the East African Community, Reference No. 1 of 2007 (First Instance Division); Plaxeda Rugumba v. The Secretary General of the East African Community, Reference No. 8 of 2010 (First Instance Division); and The Attorney General of Rwanda v. Plaxeda Rugumba, Appeal No. 1 of 2012 (Appellate Division).

\(^39\) Art 6(d) of the EAC Treaty.

\(^40\) Art 7(2) of the EAC Treaty.

\(^41\) Plaxeda Rugumba v. The SG of the EAC & the AG of Rwanda, Ref No. 8 of 2010, First Instance Division.
subsequent date. To this end, Partner States shall conclude a Protocol to operationalize the extended jurisdiction.42

This formulation exposes the reluctance of the drafters of the EAC Treaty towards paving the way for human rights litigation at the EACJ. This reluctance was demonstrated by not only handing the Council an open ended time frame for clarifying EAC human rights laws, but also through the additional requirement that this extended jurisdiction be effectuated through a fresh treaty, essentially requiring a human rights ‘Protocol’. Despite these hurdles, intrepid litigants have petitioned the EACJ on matters of a human rights nature. The presence of human rights norms in the EAC Treaty has placed the EACJ at a cross-roads, as it is now receiving more cases with human rights components than other Community norms enshrined in the EAC Treaty.43

It should be recalled that human rights did not feature in the now defunct EAC, just as they did not in the early days of the EU integration.44 The current EAC Treaty recognises human rights, as one of the founding principles of the EAC, however, upon examination of the constitutions of the EAC Partner States, one of the findings that could easily be gathered is the difference in the level of human rights protection. To its credit, despite the Court’s explicit lack of jurisdiction to adjudicate human rights matters, it continues to play a leading role in advancing fundamental rights within the EAC. To this end, the Court has been applying law-making strategy in upholding fundamental rights and promoting freedom within the EAC.

In a string of cases, applications have been made, inter alia, on grounds of infringements with respect to both ‘fundamental’ and ‘operational principles’ of the EAC. They notably include the responsibility to respect human rights in accordance with the ACHPR, and maintenance of ‘universally accepted standards of human rights’. A notable example of one of these cases is the case of James Katabazi,45 the first ever case in which the EACJ took head on the issue of its jurisdiction with respect to human rights. The Katabazi case opened a Pandora’s box of human rights cases, as the Court now receives repeated

42 Article 27 (3).
43 See A Possi ‘Striking a balance between community norms and human rights: The continuing struggle of the East African Court of Justice’ (2015) 15 African Human Rights Law Journal 192–213 http://dx.doi.org/10.17159/1996-2096/2015/v15n1a9.
44 Henrik Karl Nielsen ‘The protection of fundamental rights in the law of the European Union’ (1994) 63 Nordic J. Int’l L, 213 at 213 and in more detail, EU Chapter 6.
45 James Katabazi & 21 Others v Secretary General of the EAC & Attorney General of the Republic of Uganda, Reference No. 1 of 2007.
reference to human rights infringements. Notably, in *Katabazi*, the Court gives an insightful if not groundbreaking position regarding the respondents’ contention that the EAC Treaty does not confer on the EACJ powers to entertain matters pertaining to human rights violations, notwithstanding the contents of Articles 6 and 7.

The Court began by acknowledging how an ‘ordinary meaning’ of Article 27(2) of the EAC Treaty justifies the conclusion that the EACJ lacks jurisdiction in matters of human rights. The Court then abandons the ‘textual’ approach in favor of a ‘contextual’ one. The Court’s dictum observes how important it is to take into account those provisions of the EAC Treaty governing objectives, principles, and obligations of Partner States. Having done so, the Court arrives at its groundbreaking conclusion, which reads:

> While the Court will not assume jurisdiction to adjudicate on human rights disputes, it will not abdicate from exercising its jurisdiction of interpretation under Article 27 (1) merely because the reference [before the Court] includes allegation[s] of human rights violation.

For a long period of time, the position of the EACJ Appellate Division was that the Court will only adjudicate on a matter containing a human rights allegation only if the application contained a cause of action distinct from human rights, for example the rule of law, democracy and good governance. In the recent decision of *Democratic Party v. SG of the EAC and Others*, the EACJ stated as follows:

> The wording “... in accordance with the provisions of the [ACHPR]”, creates an obligation on the EAC Partner States to act in good faith and in accordance with the provisions of the Charter. Failure to do so constitutes an infringement of the Treaty. Such violation can be legally challenged before the [EACJ] by virtue of its jurisdiction [...] Articles 6 (d) and 7(2)

---

46 These are found at p. 3 of the judgment and in direct connection to Articles 6 and 7 of the EAC Treaty.
47 See pp. 14–15 of the judgment.
48 For details regarding the issue of interpreting treaties, see, among others, Ian Brownlie, *Principles of Public International Law* (7th ed), Oxford University Press, 2008, pp. 630–636.
49 See pp. 15–16 of the judgment.
50 *Independent Medical Legal Unit v Attorney-General of Kenya*, Appeal No. 1 of 2011, EACJ Appellate Division.
of the Treaty empower the [EACJ] to apply the provisions of the Charter, the Vienna Convention, as well as any other relevant international instrument to ensure the Partner States’ observance of the provisions of the Treaty, as well as those of other international instruments to which the Treaty makes reference. The role of the Court in the instant Reference, was to ascertain the Partner States’ adherence to, observance of, and/or compliance with the Treaty provisions—including the provisions of any other international instruments which are incorporated in the Treaty, whether explicitly [as in Article 6(d)], or implicitly [as in Article 7 (2)].

The Democratic Party case is the latest case through which the EACJ has attempted to expand its authority to adjudicate human rights cases. The decision emanated from the Appellate Division of the Court, which was originally reluctant to give straightforward interpretations on human rights norms provided for in the EAC Treaty. The fresh approach by the Court towards human rights cases could be due to the presence of newly appointed judges. If that is indeed the case, their new approach may be tempered by the political attitude of Partner States towards EACJ jurisdiction. This is evidenced by the events leading up to the suspension of the Southern African Development Community Tribunal, an unwanted experience to most human rights litigants in Africa. It also provides a referencing point for Partner States seeking to ‘destroy’ a ‘misbehaving’ judicial body. The suspension of the SADC Tribunal demonstrates the negative effects that could emanate should the EACJ seek to overextend their human rights adjudicatory jurisdiction.

6.8 Other Principles

Seemingly, a caveat was entered to the effect that Articles 6 and 7 do not exhaust the range of provisions dedicated to espousing principles of EAC Law. It will be discovered that, besides the preambular section to the Treaty and Articles 6 and 7, there are no less than another half a dozen provisions articulating general principles, sometimes explicitly, and on other occasions implicitly.

The first, within this category, is the provision addressing the fundamental issue as to the ‘aims and objectives’ of the entire EAC enterprise, and how it is envisaged to unfold. The Treaty explicitly directs that ‘Partner States undertake to establish among themselves and in accordance with the provisions of [the Treaty], a Customs Union, a Common Market, subsequently a

51 Appeal No. 64 of 2014, EACJ Appellate Division.
Monetary Union, and ultimately a Political Federation. At least two further provisions shed light as to the principles governing the manner in which integration is expected to occur. These are the specific provisions in the Treaty relating to the creation of the Customs Union and Common Market. In both instances, the Treaty calls for the negotiation and adoption of a fresh treaty, a “Protocol”, to be specific. Read together, these provisions have led some observers to press for the argument that ‘gradualism and pragmatism’, are among key principles of EAC Law and integration, even if not explicitly acknowledged as such, by the Treaty.

Apart from the above narrated principles, the Treaty is enriched with other principles deserving mention. In order to meet the objectives of the EAC, Partner States are required to conduct their activities and make decisions based on mutual trust, political will and sovereign equality; peaceful coexistence and good neighborliness; peaceful settlement of disputes; equitable distribution of benefits; and cooperation for mutual benefit. Also, Partner States have identified people-centred and market driven cooperation; obligation to provide an adequate and appropriate enabling environment, such as conducive policies and basic infrastructure; establishment of an export oriented economy accompanied with free movement of goods, persons, labour, services, capital, information and technology; and symmetry, as principles which govern the practical achievement of the EAC objectives.

6.9 Conclusion

This chapter has identified what can be termed general principles of EAC Law, and has investigated their wider implications. The justification for general

---

52 Article 5 (2) of the EAC Treaty.
53 See Articles 75, and 76 of the EAC Treaty.
54 Art 6(a) of the EAC Treaty.
55 Art 6(b) of the EAC Treaty.
56 Art 6(c) of the EAC Treaty.
57 Art 6(e) of the EAC Treaty.
58 Art 6(f) of the EAC Treaty.
59 Article 7(1)(a) of the EAC Treaty.
60 Art 7(1)(b) of the EAC Treaty.
61 Art 7(1)(c) of the EAC Treaty.
62 Art 7(1)(h) of the EAC Treaty. It is also defined under article 1 of the Treaty as ‘the principle which addresses variances in the implementation of measures in an economic integration process for purposes of achieving a common objective.’
63 Article 7.
principles is their unique role in promoting the universally accepted tenants of good governance, in addition to their capacity as a ‘source of law’. They are consistent with the ideals enumerated in the Statute of the ICJ and also function as guiding tools for achieving integration objectives. In other words, and for this reason, it is the central assumption of this chapter that understanding EAC law requires giving due attention to the issue of EAC general principles. It is observed in this chapter that the development of ‘general principles’ within the EU evolved in a manner quite distinct from what unfolded in the EAC. In the former, ‘principles’ of EU law were left to evolve gradually through the jurisprudence of the ECJ, the constitutive instruments of the then European Communities shying away from making any explicit statement on the question. In contrast, the EAC Treaty has given the issue of general principles, generous if not exaggerated attention while case law has been less robust in this regard. Articles 6 and 7 of the EAC Treaty are devoted to principles of the EAC. We also find additional principles littering the EAC Treaty elsewhere, beginning with the preambular section. There is also a troubling repetition in stating the principles, especially between Articles 6 and 7. Nevertheless, conclusively, ‘general principles’ enshrined in the EAC Treaty constitute a normative source of law and guidelines for achieving the targeted objectives of the EAC integration. It is, therefore, the duty of the Partner States to adhere and uphold the established principles, so as to make EAC integration a reality.