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THE ROLES OF IGAD IN ADDRESSING TRANSNATIONAL ORGANIZED CRIMES

A Thesis Submitted in Partial Fulfillment of the Requirements of LL.M Degree in
Public International Law



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I **AMANUEL TADESSE DEKEBO** do hereby declare that the thesis “***THE ROLES OF IGAD IN ADDRESSING TRANSNATIONAL ORGANIZED CRIMES***” is my original work and that it has not been submitted for any degree or examination in any other university. Whenever other sources are used or quoted, they have been duly acknowledged.

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This Thesis is submitted to the College of Law and Governance Studies and to the College of Graduate Studies of Addis Ababa University in fulfillment of all requirements for the degree of Masters in Public International Law.

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Acronyms

AU	Africa Union
AUPSA	Africa Union Peace and Security Architecture
AUPSC	Africa Union Peace and Security Counsel
CEWARN	Conflict Early Warning and Response Mechanism
CIIB	Criminal Intelligence and Investigation Bureau
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
COMESA	Common Market for Eastern and Southern Africa
COP	Conference of the State Parties
EAC	Eastern Africa Community
ECOWAS	Economic Community of West African States
EEE-TST	Existing, Evolving and Emerging Transnational Security Threats
EU	European Union
FATF	Financial Action Task Force
FDRE	Federal Democratic Republic of Ethiopia
GTP	Growth and Transformation Plan
HPR	House of People Representatives
ICGLR	International Conference on the Great Lakes Region
ICPAT	IGAD Capacity Building Program against Terrorism
IGAD	Inter-Governmental Authority on Development
IGADD	Inter-Governmental Authority on Drought and Development
INTERPOL	International Criminal Police Organization

IOM	International Organization for Migration
IPSA	IGAD Peace and Security Architecture
IRCPM	IGAD Regional Consultative Process on Migration
IRMCC	IGAD Regional Migration Coordination Committee
IRMPF	IGAD Regional Migration Policy Framework
ISSP	IGAD Security Sector Program
MLA	Mutual Legal Assistance
MOU	Memorandum of Understanding
NIP	National Integrated Program for Ethiopia
OCG	Organized Crime Group
ODPP	Office of the Director of Public Prosecution
RCP	Regional Consultative Process (on migration)
REC	Regional Economic Community
SADC	South African Development Community
SALW	Small Arms and Light Weapons
SICB	Security Institutions Capacity Building
TOC	Transnational Organized Crime
TOCTA	Transnational Organized Crimes Threat Assessment
TST	Transnational Security Threats
UN	United Nation
UNCAC	United Nations Convention against Corruption
UNGA	United Nations General Assembly
UNODC	United Nations Office on Drugs and Crime

UNSC	United Nations Security Council
UNTOC	United Nations Convention on Transnational Organized Crime
VCLT	Vienna Convention on the Law of Treaties
WACAP	West African Network of Central Authorities and Prosecutors
WAPIS	West African Police Chiefs

KEY WORDS: Transnational Organized Crime, Organized Criminal Group, MLA, Extradition, IGAD, ISSP

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Abstract

This research aims critically to examine the roles of IGAD in addressing TOC in light of existing legal and institutional mechanisms. Further, the research explores the roles of Member States in responding against TOC within the canopy of IGAD.

Based on the analysis, the study identified that IGAD has no specific laws for addressing TOC exclusively; however, it has made some initiatives, which are not legally binding on the Member States. It has also established institutional frameworks that significantly address TOC even though their power is limited to capacity building assistance, instead of having monitoring functions.

The undertaking of IGAD shows that how it has been succeeding in identifying and articulating the various surges of TOC and encouraged parties to adopt enforcement mechanisms including monitoring mechanism, and urging them to observe and ratify various regional and international legal frameworks for combating TOC etc.

Besides the modest achievements, IGAD has been facing challenges such as lack of comprehensive and binding legal frameworks specifically designed for TOC, the absence of monitoring body and exchange of information and sharing of criminal intelligence mechanism, lack of universal adherence towards the legal governance and absence of a common understanding on what constitutes TOC etc.

Therefore, the study has recommended that IGAD should establish and develop feasible legal and institutional frameworks that can effectively serve as a standard for future endeavors towards combating TOC.

CHAPTER- ONE

Introduction

1.1 Background of the Study

Despite the severity of the harm, which TOC has caused a serious challenge for most of the 20thC, it has only recently been recognized as a threat to the global order.¹ Accordingly, in 2004, the UN identified TOC as one of “six clusters of threats with which the world must be concerned now and in the decade’s ahead.”² Likewise, the 2005 Report of the UN Secretary-General “In Larger Freedom,” acknowledged that organized crime as one of the principal threat to peace and security in the 21st century.³ Due to its threat to international security, the UN General Secretary suggested best the possible responses to be pursued in discouraging TOC and preventing conflicts.⁴ Significantly, the UN has identified 18 categories of transnational offenses⁵ and evidently, the UNODC report shows that “the annual turnover of all criminal proceeds obtained from TOC worldwide amounted to be an estimated 3.6% of global GDP, equivalent to about \$2.1 trillion.”⁶

Stopping the operations of TOC has thus become a matter of international priority,⁷ and the rapid growth in the scale and scope of the challenge in the post-cold war would led to the passage of the United Nations Convention against Transnational Organized Crime (UNTOC), which came in to effect in late 2003 and three supplementary Protocols

¹L. Shelley, “Transnational Organized Crime: An Imminent Threat to the Nation State,” Journal of International Affairs (JSTOR), Vol.48, No.2 (1995), p.463

² The UN High-level Panel on Threats, Challenges and Change, “A More Secure World: our Shared Responsibility,” A/59/565, (2 December 2004)

³ UN’s General Assembly A/59/2005/, (21 March 2005)

⁴ I. Stoica, “Transnational Organized Crime: An International Security Perspective,” Journal of Defense Resources Management, Vol.7 (2016), p.22

⁵ R. Penny, “The Evolving Nature of Transnational Crime,” RCMP Gazette, Vol.75, No.2 (2013), p.22

The UN has identified 18 categories of transnational offences, which include money laundering, theft of intellectual property, art and cultural objects, illicit arms trafficking, aircraft hijacking, sea piracy, insurance fraud, computer and environmental crime, trafficking in persons and human body parts, illicit drug trafficking, fraudulent bankruptcy, infiltration of legal business, and corruption and bribery of public or party officials.

⁶Organized Crime Violence and Development (August 2016), p.1

⁷UNODC, The Globalization of Crime: A Transnational Organized Crime Threat Assessment (UN pub, 2010), p.19

thereto.⁸ The Convention became a landmark on the subject, given that it represents a legal instrument designed to improve international legislation and facilitate cooperation between countries.⁹

Owing to widespread internationalization of activities run by organized criminal groups, many states are interested in international coordination with a view to more effective methods for fighting crime.¹⁰ A growing number of bilateral and multilateral agreements reflect the increasing recognition that transnational crime must be addressed through international cooperation.¹¹ In doing this, the AU via the Protocol relating to the Establishment of the Peace and Security Council provides that the REC's are part of the overall security architecture of the union, which has the primary responsibility for promoting peace and security in Africa.¹² Thus, the emerging threat of TOC invites RECs to respond on through cooperation. In this vex, IGAD is not an exception to venture its commitment to curtail the emerging threats of TOC since "it is one of the eight building blocks of the REC of the AU."¹³

The IGAD region is known as one of the most volatile and conflict-ridden parts of the world.¹⁴ Terribly, its border is poorly managed and controlled that makes it vulnerable to various forms of transnational security threats including terrorism, violent extremism, violent conflicts, trafficking of humans, trafficking of illegal weapons, illicit smuggling

⁸The UNTOC (2000) and Supplementary Protocols such as "the Protocol to Prevent, Suppress and Punish Trafficking in Person, Especially Women and Children (Trafficking of Persons in Protocol); the Protocol against the Smuggling of Migrants by Land, Sea and Air (Smuggling of Migrants Protocol); and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition.(the Firearms Protocol)

⁹ A. Standing, "Transnational Organized Crime and the Palermo Convention: A Reality Check," International Peace Institute., (2010), p.10

¹⁰ K. Raczkowski, Transnational Organized Crime: An Economic Security Threat in the Baltic Sea Region (Institute for Security and Development Policy, 2010), p.47

¹¹ UNODC "Toolkit to Combat Smuggling of Migrants, Tools 3", (UN pub, 2010), p.2

¹² The Protocol Relating to the Establishment of the Peace and Security Council of the Africa Union (2000), Article 16(1)

¹³ Regional Economic Communities, available at <https://au.int/en/organs/recs> Retrieved on accessed on 11, April 2018

¹⁴ Kinfe Abraham, "The Horn of Africa: Conflicts and Conflict Mediation in the Greater Horn of Africa," (The EIIPD pub, 2006)

of migrants, illicit trades and money laundering and other forms of criminal activities.¹⁵ Regarding this, the former Executive Director of the UNDOC, East Africa is becoming a free economic zone for all sorts of trafficking-drugs, migrants, gun, hazardous wastes, and natural resources.¹⁶ IGAD has also revealed that TOC becomes a real threat to the security of the region.¹⁷ All these facts depict that the region becomes a hub for TOC and accordingly alarmed IGAD to give a dire concern.

About TOC in the IGAD region, previous academic researches/literature too much focused on a particular type of crime and geographical area or limited to specific criminal networks. A limited number of scholars, for instance, David Luna's research focused on Trans Africa security: Combating illicit trafficking and organized crime in Africa.¹⁸ Peter Gastrow was focused on Termites at Work: Transnational Organized Crime and State Erosion in Kenya.¹⁹ Mark Shaw's piece was reliant on drug trafficking and organized crime in West and Central Africa.²⁰ Thus, these prove that there are no pieces of literature, which typically dealt with the roles of IGAD in addressing TOC's. Thus, this study is aspired to fill the knowledge gaps exists in the works of literature, and to provide conceivable solutions for IGAD on the subject matter. Therefore, this research is aspired to examine the roles of IGAD in addressing TOC's.

1.2 Statement of the Problem

Besides inter and an intra-State conflict, "the IGAD region is plagued by various forms of TST's which include terrorism, human trafficking, piracy etc."²¹ For example, "the 2013 UNODC Report indicated how organized crime and its criminal networks are growing in

¹⁵ Mapping Cross-Border Security Threats and Criminal Networks in the IGAD Region, available at <https://igadssp.org/index.php/documentation/5-mapping-cross-border-security-threats-and-criminal-networks-in-the-igad-region/file> Accessed on 11, April 2018

¹⁶ www.unodc.org/unodc/en/aboutunodc/speeches/2009-08-12-africa-under-attack.html Retrieved on 11, April 2018

¹⁷ Transnational Organized Crime, available at <https://igadssp.org/index.php/components-mainmenu/transnational-organized-crime> Retrieved on 11, April 2018

¹⁸ David Luna, Trans-African Security: Combating Illicit Trafficking and Organized Crime in Africa (May 11, 2017), Available at <https://www.state.gov/j/inl/rls/rm/2017/270858.htm> Retrieved on 18 August 2018

¹⁹ P. Gastrow, "Termites at Work: Transnational Organized Crime and State Erosion in Kenya" (International Peace Institute, September 2011)

²⁰ M. Shaw, "Comprehensive Assessment of Drug Trafficking and Organized Crime in West and Central Africa," (African Union, January 2014)

²¹ Solomon Gebreyohannes, Regional Integration in the Horn of Africa: State of Affairs and Challenges (2016), No.31, p.11

the Eastern Africa region²² and particularly in IGAD.²³ The Report focused on crimes that are transnational in nature including smuggling of migrant; drug trafficking, illegal flow of goods and elephant's ivory, human trafficking, firearms trafficking and maritime piracy. Accordingly, the IGAD region is serving as a transit port for TOC. For instance, more than 90,000 migrants mainly from Ethiopia and Somalia were smuggled into Yemen in 2014.²⁴ Further, Kenya and Uganda have increasingly become transit countries for trafficking heroin and cocaine to Europe, USA, China, and Turkey.²⁵

Towards this emerging threat, IGAD has acknowledged that TOC is a threat to peace and security and the economic integration of the region,²⁶ and wielding its efforts to stem by expanding the scope of its regional security challenges, adopting new security strategies²⁷ and by establishing institutional mechanisms, among others. However, despite the forestalling efforts undertaking by IGAD, the prevalence of TOC in the region has not decreased rather it is increasing at an increasing rate by changing and evolving its facets.

Therefore, questions that likely snowballed into the vexing are whether or not IGAD has succeeded to develop effective legal and institutional mechanisms and how IGAD and its Member States are addressing TOC in the region. Based on these standpoints, this study is aspired to examine the roles of IGAD in addressing TOC's.

1.3 Research Questions

Questions, which guide the exploration of this research problem, will intensely epicenter on as follows:

1.3.1 Main Question:

What are the Roles of IGAD in Addressing Transnational Organized Crimes?

²² The UNODC-ROEA, Transnational Organized Crime in East Africa: A Threat Assessment Reports, (September 2013). The report was focused on TOC affecting the Eastern Africa, among these, IGAD member states were also part of the Report i.e. Djibouti, Eritrea, Ethiopia, Kenya, Somalia and Uganda.

²³ Id., p.6

²⁴ <https://www.unodc.org/easternafrika/en/Stories/new-ethiopian-law-on-human-trafficking-and-migrantsmuggling.html> Accessed on 15 September, 2018

²⁵ J. Picarelli, "African Actors in International Organized Crime" ISPAC, (December 2010), p.39

²⁶ IGAD and The Global Initiatives, Comprehensive Assessment Study on Vulnerabilities and threats of Transnational Organized crime in the IGAD region, (2014, Unpublished, ISSP), p.6

²⁷ IGAD and Sahan Foundation, "Al-Shabaab as a Transnational Security Threat," (March 2016), p.6

1.3.2 Sub-Questions:

1. Does IGAD have its own legal and institutional frameworks in addressing TOC's?
2. What are the roles of Member States in responding against TOC within the canopy of IGAD?
3. What are the roles/achievements and the challenges associated with IGAD in addressing TOC's?

1.4 Objectives of the study

1.4.1 General Objective of the Study

- ✎ The objective of this research is painstakingly to examine the roles of IGAD in addressing TOC.

1.4.2 Specific Objectives of the Study

- I. To explore and examine the viability of IGAD's legal and institutional frameworks for addressing TOC's.
- II. To examine the commitments of Member States in supporting the roles of IGAD for addressing TOC's.
- III. To explore the major roles/achievements and the challenges associated with IGAD for addressing TOC's.

1.5 Significance of the Study

This research revolves on the untouchable areas in its attempt to examine the roles of IGAD in addressing TOC's. Hence, this thesis may contribute to shed light on the legal and institutional mechanisms developed by IGAD for suppressing TOC. By doing this, it will also show the rate of recognition which the Member State of IGAD have given to the need for addressing the challenge posed by TOC as a serious threat for regional peace and security. Despite its limited room focusing on the IGAD region, it may help policymakers to understand the legal and institutional aspects of the overall multisector as regional efforts being exerted dealing TOC in the Africa continent. Moreover, it will serve as a source of input for students, researchers and policy architects who have a keen interest to conduct further studies on TOC.

1.6 Scope and Limitation of the study

The scope of this research covers the legal and institutional mechanisms that regulate IGAD's role for addressing the emerging threats of TOC, and its geographical scope is limited to the eight active Member States of IGAD i.e. Djibouti, Ethiopia, Eritrea, Kenya, Somalia, South Sudan, Sudan and Uganda. Indeed, the region is significantly exposed to different forms of crimes such as terrorism, piracy and TOC. Due to its defined scope, the thesis is strictly confined to the roles of IGAD in addressing TOC as its main theme, and interrelated issues such as the pragmatic roles of IGAD as well as the member states in the fight against TOC. Therefore, the chapters engraved in this study will address the issues allocated to it without exceeding the scope, which the research is intended to observe.

Regarding its limitations, the formidable restraint that was faced by a researcher in the course of conducting this study was the dearth of relevant authorities on the subject matter since TOC is an emerging security peril in the IGAD region. Nevertheless, to realize the inbuilt objectives of the study and to get rid of these backlogs, the researcher was exerted his endeavors by consulting authorities engraved in other legal systems and untiring to juxtapose them with the jurisprudence of IGAD.

1.7 Research Methodology

To realize the main theme of this study, this research is contingent on the doctrinal type of research. As such, the research utilized both primary and secondary sources, which have greater importance on the subject matter. To this end, the research employed both unstructured and structured interview with H.E Tu'emay Aregawi, Head of Transnational Organized Crime Pillar at the IGAD-Security Sector Program. Here, the respondent was sampled based on Purposive Sampling Method i.e. the deliberative choice of an informant due to the qualities the informant possesses and it involves identifying and selecting individuals that are especially knowledgeable about or experienced with a phenomenon of interest. Here, the respondent was picked by the researcher for the interview question is because of the reason that he has profound knowledge and

experiences on the subject matter. The collected data were explored by using a descriptive and analytical method of data analysis together with the analytical type of research design.

1.8 Organization of the Study

The overall sketch of this study has five chapters. The first chapter will outline the background of the study, statement of the problem, objectives of the study, research questions, significance of the study, the scope of the study, research methodology, limitations of the study, and organization of the study. The second chapter is devoted to the international legal and institutional frameworks for addressing TOC including its definitional concepts. The third chapter will be going to identify and examine the legal and institutional frameworks introduced by IGAD for addressing TOC. As well, the threats of TOC in the region, historical genesis and organizational setups of IGAD will be highlighted. The fourth chapter contains the practical roles of IGAD in addressing TOC together with the Member States role, and the recurring challenges, which bar IGAD from fighting TOC. Finally, the chapter ends with conclusions and recommendations.

CHAPTER-TWO

The International Legal and Institutional Frameworks for Addressing Transnational Organized Crime

2.1 Introduction

TOC is a security threat that undermines the political, economic and social orders of the global community. Accordingly, the efforts to prevent TOC have gained much prominence in international forums and resulted in the adoption of international legal and institutional frameworks. Thus, a brief description of the existing international legal and institutional frameworks governing TOC will be underway.

2.2 Current International Legal frameworks for Addressing TOC

TOC is one of the major threats to states,²⁸ human security, impeding the social, economic, political and cultural development of societies worldwide.²⁹ Evidently, the 2004 UN's High-Level Panel on Threats, Challenges, and Change identified TOC as one of six clusters of threats with which the world must be concerned now and in the decade's ahead.³⁰ Today, national approaches alone to combat organized crime are not sufficient.³¹ In doing this, disrupting criminal networks and the links between them requires a response that is based on international cooperation.³² In a context of growing concern about organized criminal groups and criminal operations that cross national borders, an increasing number of countries have been adopting new laws to deal with the problem.³³ Hereinafter, highlight will be given on a major international legal instruments introduced to address TOC.

2.2.1 The UN Convention against Illicit Traffic in Narcotics Drugs and Psychotropic Substances

The United Nation's Convention against Illicit Traffic in Narcotics Drugs and Psychotropic Substances (hereinafter, UN Drug Convention) was adopted in 1988³⁴ and

²⁸ The UN High-level Panel on Threats, Challenges and Change, Cited above at note 2, p.52

²⁹ W. Kego and C. Ozkan, "Countering Transnational Organized Crime: Challenges and Countermeasures," Institute for Security and Development Policy, (April 2010), p.5

³⁰ The UN High-level Panel on Threats, Challenges and Change, Cited above at note 2

³¹ Id., p.32

³² Ibid.,

³³ The UNODC Legislative Guides for the Implementation of the UNTOC and the Protocols thereto

³⁴ L. Shelley, Cited above at note 1, p.487

came into force in 1990,”³⁵The Convention ostensibly deals with only one types of TOC; it recognizes the nexus between the drug trade and other criminal activity.³⁶ Significantly, “it is the first multilateral Convention that required international cooperation among the Member States in the investigation and prosecution of drug trafficking”³⁷as a typical forms of TOC.

2.2.2 The UN Convention against Transnational Organized Crime

The declarations issued at the two G-7 Summits that followed the 1991 London Summit, political discourses on international crime began to change and the shift away from the “war on drugs” to the fight against TOC began to occur.³⁸ Because of this and the rapid growth in the scale and scope of the problem in the post-cold war would lead to the passage of UNTOC.³⁹Supporters argued that criminal organizations that operate transnationally do so beyond the control of any one state and this demands a coordinated international response. The major political step was the adoption by the World Ministerial Conference on Organized Transnational Crime in 1994 of the Naples Political Declaration and Global Action Plan against Organized Transnational Crime.⁴⁰ The Naples Declaration called for effective international cooperation to fight TOC and recommended consideration of the development of a treaty. Poland placed the development of the Convention on the agenda of the UNGA in 1996 and submitted a draft convention to it.⁴¹ The process was then taken up by an Ad hoc Committee⁴²and open to all states. A diplomatic conference held in Palermo, Sicily, the home of the

³⁵ L. Shelley, “Transnational Organized Crime and Seized Assets: Moral Dilemmas Concerning the Disposition of the Fruits of Crime, (Maastricht J. Eur. & Comp. L. 35), 2000, p. 42

³⁶ C. Guymon, “International Legal Mechanisms for Combating Transnational Organized Crime: the Need for a Multilateral Convention,” Berkley Journal of International Law., Vol.18 (2000), p.69

³⁷ Id., p.70

³⁸ A. Scherrer, G8 Against Transnational Organized Crime (Ashgate pub, 2nd ed.,2009), p.21

³⁹ The UNTOC (2000), Cited above at note 8

⁴⁰ N. Boister, “An Introduction to an Transnational Criminal Law.” (OSAIL, 1st ed., September 2012)

⁴¹ UNDOC, “Question of the Elaboration of an International Convention against Organized Transnational Crime.” (A/C.3/51/7, October 1998)

⁴² UNGA Resolution 23/111, (1999)

Mafia, negotiated the UNTOC, which was finally adopted in 2000⁴³ and ratified in 2003,⁴⁴ and around 147 States are signatories and 189 States are parties to it.⁴⁵

As per Article 1 of the UNTOC, the far-reaching goal of the Convention is to promote cooperation, both for the prevention of and for the effective fight against TOC. As well, requires State parties to criminalize activities including organized criminal groups, money laundering, corruption, obstruction of justice,⁴⁶ and other serious crimes.⁴⁷

Furthermore, to promote cooperation and to implement these legal frameworks, enforcement mechanisms have been established such as peer and monitoring review,⁴⁸ extradition,⁴⁹ MLA,⁵⁰ Confiscation and forfeiture provisions,⁵¹ provision of capacity building assistance,⁵² exchange of information and criminal intelligence gathering,⁵³ and victims and witness protection etc.⁵⁴

Significantly, three Protocols were also added to supplement the UNTOC on the related issues of trafficking in persons, smuggling of migrants, and illicit manufacture and trafficking in firearms.⁵⁵ The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking in Persons Protocol) is enacted to suppress human trafficking and entered into force on 25 December 2003,⁵⁶ with around 173 parties,⁵⁷ and 117 signatories.⁵⁸ The Protocol against the Smuggling of Migrants by Land, and Air (Smuggling of Migrants Protocol) is introduced to prevent the smuggling

⁴³ The UNTOC (2000), Cited above at note 8,

⁴⁴ J. Albanese, “Deciphering the Linkages between Organized Crime and Transnational Crime.,” *Journal of International Affairs*, Vol. 66, No. 1(2012), p.11

⁴⁵ CTOC/COP/2018/CRP.1, Status of Adherence to the UNTOC and the Supplementary Protocols thereto (2018)

⁴⁶ The UNTOC (2000), Cited above at note 8, Article 5, 6, 8, and 23

⁴⁷ Id., and the Supplementary Protocols, Article 2

⁴⁸ Id., Article 32(4)

⁴⁹ Id., Article 16

⁵⁰ Id., Article 18

⁵¹ Id., Article 12-14

⁵² Id., Article 29(2-4)

⁵³ Id., Article 26, 27 & 28

⁵⁴ Id., Article 24 & 25

⁵⁵ UNODC, “Organized Crime,” available at http://www.unodc.org/unodc/en/organized_crime/index.html> accessed on 8 May, 2018

⁵⁶ The Parliament of the Republic of Fiji, “Report on the UNTOC”

⁵⁷ http://www.unodc.org/documents/treaties/UNTOC/COP/Session_9/CTOC_COP_2018_2/V1805125.pdf accessed on 8 May, 2018

⁵⁸ CTOC/COP/2018/CRP.1, Cited above at note 45

of migrants and came into force on 28 January 2004,⁵⁹ with around 146 State parties⁶⁰ and 112 signatories.⁶¹ The Protocol against the Illicit Manufacturing of Trafficks in Firearms, their parts and Components, and Ammunition (Trafficking in Firearms Protocol) is enacted to prevent the illicit manufacture of and trafficking in firearms, their part, and components and ammunition, and came into force on 3 July 2005,⁶² and it has around 115 parties and 52 signatories.⁶³

Besides, other international legal frameworks have also introduced to prevent TOC's such as the United Nations Convention against Corruption (UNCAC), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and the Financial Action Task Force (FATF) etc.⁶⁴ Therefore, the afore-said international laws show how the global community is committed to fight TOC resiliently.

2.2.3 Definition of Transnational Organized Crime

Defining TOC facilitates international criminal cooperation, for without the benchmark about what it means, combating TOC may be ineffective.”⁶⁵ However, regarding its definition, “TOC is a vague concept and not properly understood elsewhere in the world.”⁶⁶ In other words, there is no clarity, among both legal academics and practitioners about what qualifies TOC. However, this does not necessarily mean that the term is far from scholars' discourses. So, “there are at least two competing definitions regarding TOC: one that focuses on “particular groups of criminals” and the other focuses on “particular types of crime.”⁶⁷ These two dogmas imply that the term “organized” means “criminals that are organized in a group,” while others view it as “a crime that is

⁵⁹ The Parliament of the Republic of Fiji, Cited above at note 56

⁶⁰ http://www.unodc.org/documents/treaties/UNTOC/COP/Session_9/CTOC_COP_2018_3/V1804597.pdf> Accessed on 15 May, 2018

⁶¹ CTOC/COP/2018/CRP.1, Cited above at note 45

⁶² The Parliament of the Republic of Fiji, Cited above at note 56

⁶³ CTOC/COP/2018/CRP.1, Cited above at note 45

⁶⁴ The European Union Action Document for Enhancing African Capacity to Transnational Organized Crime, p.4

⁶⁵ P. Hauck and S. Peterke, Organized Crime and Gang Violence in National and International Law, (International Review of the Red Cross, 2010), vol. 92/878, p.407-436

⁶⁶ P. Gastrow, “Transnational Organized Crime: The Stepchild of Crime Combating Priorities,” Institute for Security Studies, (Policy Brief 46, October, 2016), p.1

⁶⁷ The UNODC, Cited above at note 7, p.19

committed in a systematic manner.” “Both definitions have some validity, but neither is sufficient to describe the global reality.”⁶⁸

A multiplicity of definition has been given towards organized crimes are. For instance, as Sam Porteous described “organized crime as *economically motivated illicit activity undertaken by any group, association or other body consisting of two or more individuals, whether formally or informally organized, where the negative impact of said activity could be considered significant from an economic, social, violence generation, health, and safety and/or environmental perspective.*⁶⁹ Furthermore, Van Duyne conceptualized it as “*the passing of illegal goods and/or services over national borders and/or rendering criminal support to criminal activities or related persons in more than one country.*”⁷⁰ Based on these scholars discourses, TOC constitutes as a criminal activity committed in more than one country for a perpetual period of time by using illegal means of violence or illicit activities with an exclusive or limited memberships for the obtaining of economic benefits.

In spite of the above definition, “the most authoritative definition that has been accepted worldwide as being the *locus-classicus* that most accounts on TOC cite is the UNTOC.”⁷¹

Accordingly, Article 2(a) of the UNTOC defines an *organized criminal group* as:

“a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offenses established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.”

Elements which constitutes organized criminal groups are when its committed by a group of three or more persons that was not randomly formed, acting in concert with the aim of

⁶⁸ Ibid.

⁶⁹ F. Madsen, “Transnational Organized Crime,” (Routledge, 2009), p.15

⁷⁰ Y. Zabyelina, The State and Transnational Organized Crime: A Case Study Analysis of Criminal Opportunities in the Russian Federation and the United States, (2013, Unpublished PhD Dissertation, School of International Studies Trento, Italy), p.32

⁷¹ Id., p.30-31,

committing at least one or more serious crime, the actors must secure direct and indirect financial, and other material benefits and committed for existing period of time.

Here, the UNTOC defines not about the crime of TOC rather than the criminal group. Even if it is difficult to put exact definition about TOC, still we can infer some connotations about TOC by reading Article 2(a) in tandem with Article 3 of the UNTOC. Article 3(1) (a) of the UNTOC states that the Convention shall apply to the prevention, investigation and prosecution of the offence established in accordance with the requirements of Articles 5, 6, 8 and 23 of the UNTOC. Moreover, sub-article 3(1) (b) denotes that it can be applied where the offences are serious, transnational in nature and involves the activity of an organized criminal group. Here, the requirements of transnational in nature can be meet:

“if it is perpetrated in more than one state; perpetrated in one state but a substantial part of its planning, direction or control takes place in another state; crimes in one state committed by groups that operate in more than one state or crimes committed in one state that substantially influence other states.”⁷²

Therefore, despite there is no consensus as to what qualifies TOC, the most authoritative definition is what is stated under Article 3(1) (a-b) (2) (a-d) and Article 2(a) of the UNTOC.

2.3 The International Institutional Frameworks for Addressing TOC

Globally, several institutional frameworks have been established to implement the afore-said legal frameworks governing TOC. These institutional frameworks are the following:

2.3.1 Conference of the State Parties (COP)

A COP was established as an institutional framework to improve the capacity of states parties to combat TOC and to promote and review the implementation of the UNTOC.⁷³ Further, it is entrusted with the power of facilitating the exchange of information among States Parties on patterns and trends in TOC and on successful practices for combating TOC and duty to realize its mandates by cooperating with

⁷² The UNTOC (2000), Cited above at note 8, Article 3(2a-d)

⁷³ Id., Article 32(1)

relevant international, regional organizations and nongovernmental organizations.⁷⁴ Here, the significant power that is given for COP is monitoring power i.e. reviewing the measures taken by States Parties in implementing the UNTOC and the difficulties encountered by them in doing so,⁷⁵ besides providing technical assistances to the state parties.⁷⁶

2.3.2 The Secretariats Service

The Secretariat Service was established by the Secretary-General of the UN⁷⁷ to assist the CoP in carrying out its inherent functions set forth in the UNTOC⁷⁸ and States Parties in providing information to the CoP⁷⁹ as it is obliged to provide information as per Article 32(5) of the UNTOC. Further, it ensures the necessary coordination with the secretariats of relevant international and regional organizations.⁸⁰

2.3.3 United Nations Office on Drugs and Crime (UNODC)

The UNODC was created in 1997 in Vienna through the merger of two existing programs, the United Nations Drug Control Program and the Centre for International Crime Prevention.⁸¹ It is the universal legally binding bodies and the guardian of international conventions such as the UNTOC and its supplementary Protocols, the UN's Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the UNCAC.⁸² The UNODC operates on three important pillars; field-based technical cooperation projects to enhance the capacity of Member States to counteract illicit drugs, crime and terrorism; and research and the analytical work to increase knowledge and understanding of drugs and crime issues and expand the evidence base for policy and operational decisions. Moreover, it operates a normative work to assist States in the ratification and implementation of the relevant international treaties, the development of

⁷⁴ Id., Article 32(3)(b)(c)

⁷⁵ Id., Article 32(4)

⁷⁶ Id., Article 32(4)

⁷⁷ Id., Article 33(1), 33(2a)

⁷⁸ Id., Article 33(2a)

⁷⁹ Id., Article 33(2b)

⁸⁰ Id., Article 32(2)(c)

⁸¹ F. Madsen, "The Historical Evolution of the International Cooperation against Transnational Organized Crime: An Overview", (Oxford University Press, 1st edition, 2016), P 15-16

⁸² Y. Zang, P. Fall, and T. Inomata, "Review of Management and Administration in the United Nations Office on Drugs and Crime," JIU/Rep/2010/10 (UN pub, 2010), p.2

domestic legislation on drugs, crime and terrorism, and the provision of secretariat and substantive services to the treaty-based and governing bodies.⁸³

Therefore, the COP, the Secretariats services and UNODC are some of the international institutional frameworks established to the effective implementation of the laws preventing TOC.

⁸³ About UNODC available at <https://www.unodc.org/unodc/en/about-unodc/index.html?ref=menutop> retrieved on 15 June, 2018

CHAPTER-THREE

The Legal and Institutional Frameworks of IGAD in Addressing Transnational Organized Crime

3.1 Introduction

IGAD is grappling with the emerging security threats of TOC's including trafficking of humans and weapons, smuggling of migrants, drug trafficking, counterfeiting products and illegal border cash flows, cattle rustling etc. As a result, to maintain peace and security in the region, IGAD has undertaken various strides including the taking of legal and institutional measures. Henceforward, an examination will be made on the legal and institutional frameworks that conspicuously set by IGAD for addressing TOC. Before this, a bit highlight will be given on the historical genesis and organizational setups of IGAD including the prevalence of TOC in the region.

3.2 The Historical Genesis of IGAD

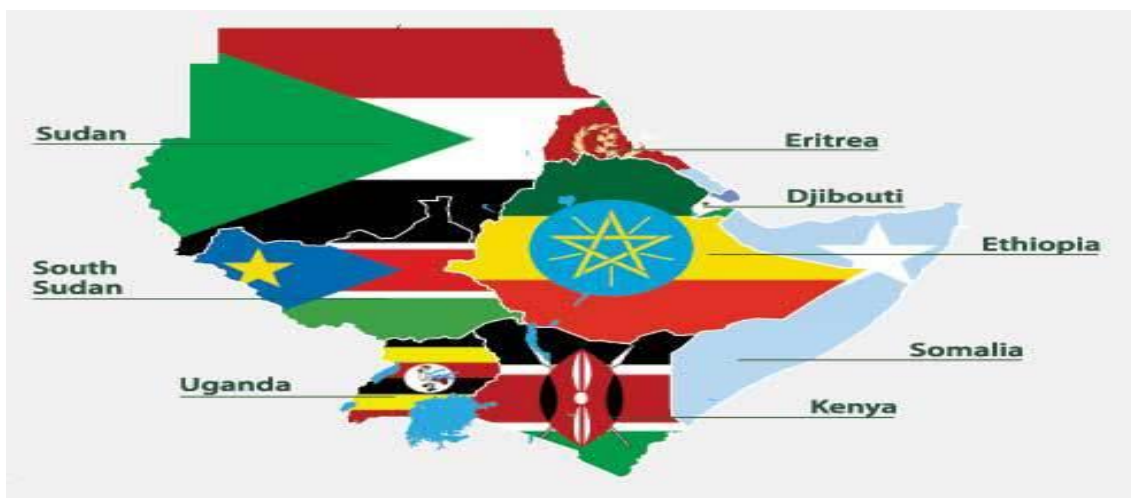


Figure 1 *Member States of IGAD⁸⁴

The Inter-Governmental Authority on Development (IGAD) was originated in March 1996, to overtake the Inter-Governmental Authority on Drought and Development (IGADD) that was instituted in 1986 by the then drought-stricken countries such as Djibouti, Ethiopia, Kenya, Somalia, Sudan and Uganda.⁸⁵ Eritrea joined after its

⁸⁴ The IGAD region comprises the countries of Djibouti, Eritrea, Ethiopia, Kenya, Somalia, Sudan, Uganda and South Sudan. Available at <http://migration.igad.int/member-states/> Retrieved on 25 August, 2018

⁸⁵ K Isaac W/Sellassie, "IGAD as an International Organization: Its Institutional Development and Shortcomings," *Journal of African Law*, Vol. 55, No. 1 (2011), p.1

independence in 1993.⁸⁶ However, it has withdrawn from IGAD since 2007, because of IGAD's support for Ethiopia's intervention in Somalia in 2006.⁸⁷ Now, Eritrea is on the way to rejoin, following the cessation of a skirmish with Ethiopia.⁸⁸ Following its secession from Sudan in 2011, South Sudan became the eighth Member States of IGAD.⁸⁹ Upon replacement, the mandate of IGAD was expanded to embrace the promotion of peace and security and inter-regional economic integration etc.⁹⁰

3.3 The Organizational Setup of IGAD

Structurally, IGAD has the following four principal components: the Assembly of Heads of State and Government, the Council of Ministers, the Committee of Ambassadors, and the Secretariat.⁹¹

3.3.1 The Assembly of Heads of State and Government

It is the supreme organ, which composed from the Heads of States and Government of Member States and it meets at least once a year and any time upon the request of any of the Member States with the agreement of the majority of its members. It is entrusted with the powers of policymaking and controlling the functioning organization, monitoring political issues especially on conflict prevention, management and resolution and appoint the Executive Secretary upon the recommendation of the Council of Ministers etc. The decision of the Assembly shall only be reached through consensus.⁹²

3.3.2 The Council of Ministers

It is comprised of foreign ministers and one other focal minister designated by each Member State. It has responsibilities including the functions of making recommendations

⁸⁶ M. Juma, "The Infrastructure of Peace in Africa Assessing the Peace Building Capacity of African Institutions," (2012, Unpublished Report, International Peace Institute Academy), p.37

⁸⁷ Memar Ayalew & Solomon Gebreyohannes, "The Role of Regional Economic Communities in Fighting Terrorism in Africa: The Case of IGAD," European Scientific Journal., Vol.2 (2014), p.218

⁸⁸ D. Mumbere, "Eritrea will rejoin, it's just a matter of time: IGAD Secretary General", available at <http://www.africanews.com/2018/09/13/eritrea-will-rejoin-us-it-s-just-a-matter-of-time-igad-secretary-general/> Retrieved on 13 September, 2018

⁸⁹ UNDP, "RSS/IGAD Capacity Building Initiative in South Sudan, available at [https://info.undp.org/docs/pdc/Documents/SSD/IGAD%20Phase%20I%20Final%20Report%20\(002\).pdf](https://info.undp.org/docs/pdc/Documents/SSD/IGAD%20Phase%20I%20Final%20Report%20(002).pdf) Accessed on 13 September 2018

⁹⁰ Tesfaye Molla, Road Blocks to Economic Integration in the IGAD Sub-Regional (May 2002, Unpublished Thesis, Addis Ababa University), p.2

⁹¹ The Agreement Establishing the IGAD (1996), 8(a-d)

⁹² Id., Article 9(1-4)

to the Assembly, set agendas, approves the budget of IGAD, promoting peace and security and other initiatives for the realization of IGAD's objectives, and review the operation of the authority etc. Meeting at least twice a year, and its decisions reached by consensus or, failing this, by a two-thirds majority of the members present."⁹³

3.3.3 The Committee of Ambassadors

It is comprised of Member States' ambassadors or plenipotentiaries accredited to the country of IGAD's headquarters. It is entrusted with advising the Executive Secretary on the promotion of its efforts and guiding the Executive Secretary on the interpretation of policies etc.⁹⁴ Here, the Committee of Ambassadors is a body in which the interests of Member States are represented for shaping the workings of the executive body of IGAD i.e. Secretariat.⁹⁵ Its decision is reached by consensus or, failing this, by a two-thirds majority of the members present."⁹⁶

3.3.4 The Secretariat

The Secretariat is headed by an executive secretary to be appointed by the Assembly for a term of four years which is renewable once, and assisted by experts and technicians. The secretariat is organized into three substantive divisions: Peace and security, Economic Cooperation and Social Development, Agriculture and Environment.⁹⁷ It is entrusted with the duty of implementing the decisions of the Assembly and the Council, preparing draft proposals and agreements on matters arising from the decisions and recommendations of the Assembly and the Council, and initiating, identifying and coordinating development programs etc.⁹⁸

3.4 Transnational Organized Crime in the IGAD Region

The IGAD region is notorious for violent inter and intra-state conflicts, which have been the causes of mistrust among the Member States and often characterized by a lack of

⁹³ Id., Article 10(1-5)

⁹⁴ Id., Article 11(1-2)

⁹⁵ Solomon Dersso, "East Africa and the IGAD: Mapping Multilateralism in Transition," International Peace Institute, (2014), p.6-7

⁹⁶ The Agreement Establishing the IGAD (1996), Cited above at note 91, Article 11(4)

⁹⁷ Solomon Dersso, Cited above at note 117, p.11

⁹⁸ The Agreement Establishing the IGAD (1996), Cited above at note 91, Article 12(2)

democratic governance, frequent drought, grinding poverty and the presence of weak state institutions.⁹⁹ As well, Solomon Gebreyohannes said, IGAD is known for various forms of TST's, which include terrorism, human trafficking, piracy, etc. Moreover, the 2013 UNODC Report indicated how organized crime and its criminal networks are growing in the Eastern Africa region¹⁰⁰ and particularly in IGAD.¹⁰¹

Essentially, "IGAD has critically acknowledged that TOC becomes a threat to peace and security and the economic integration of the region."¹⁰² Tu'emay reaffirmed that "IGAD and the Member States' have felt forms of TOC are becoming prevalent and posing significant bullying, and confidently itemized TOC as a real threat."¹⁰³ Experts on the subject matter have appealed ample of *raison d'être*s for the emergency of TOC. For example, Allum and Siebert argue, "organized crime gangs have mostly appeared and developed in situations of political upheaval, economic chaos, and/or social confusion."¹⁰⁴ Kim Mattson also argues that weak states and conflict regions are attractive to organized crime groups....¹⁰⁵ As an indication, for instance, Somalia was described by British Foreign Secretary William Hague as "the world's most failed states, and conventional wisdom typically argued that failed states were pivotal to the growth of TOC groups."¹⁰⁶ As it is known, the IGAD region has been facing various political upheavals such as lack of democratic governance and rule of law, the pervasiveness of failed states like Somalia and intra-state conflicts in South Sudan, and lack of effective financial regulation as economic chaos. In light of these scholars view, all these security glitches are significantly contributed to the proliferation of TOC in the IGAD region.

About the categories of TOC, the Report of UNODC indicated that illegal smuggling of migrants, drug and human trafficking, trafficking of illicit goods, illegal selling of

⁹⁹ Solomon Gebreyohannes, Cited above at note 21, p.11

¹⁰⁰ The UNODC-ROEA, Cited above at note 22

¹⁰¹ Id., p.6

¹⁰² IGAD and The Global Initiatives, Cited above at note 26, p.6

¹⁰³ Interview with Tu'emay Aregawi Desta, Head of Transnational Organized Crime Pillar at the IGAD Security Sector Program (ISSP), October 9, 2018

¹⁰⁴ F. Allum and R. Siebert, (ed.) Organized Crime and the Challenge to Democracy, (Routledge, 2003)

¹⁰⁵ K. Mattson, "Weak States and Transnational Crime: Consequences for Stability," Studies in African Security, (March 2015), p.

¹⁰⁶ M. Shaw (edi), J. Albanese and Philip Raichel, Transnational Organized Crime in Africa" (SAGE Publisher), p.97

animals products, firearms trafficking and maritime piracy are some of the crimes, which are pervasive in the IGAD region. For instance, the IGAD region is the home of large and vulnerable streams of smuggled migrant's, and more than 90,000 migrants mainly from Ethiopia and Somalia were smuggled into Yemen in 2014. Ethiopia is, in fact, a country of origin and transit to three migration routes in Africa Northern, Southern, and Eastern.¹⁰⁷ In this regard, Tu'emay said, "in Ethiopia, for example, outward migrants smuggling is considered to be taken at a high level in terms of the number of victims, money it engages and the size of the criminal activity itself."¹⁰⁸ As well, drug or heroin trafficking has been trafficked to and through Eastern Africa since at least the 1980s, and a series of recent large seizures suggests that this flow has increased with at least 2.5 tons of pure heroin per year, worth some US\$160 million.¹⁰⁹ The region is becoming a major landing point for heroin shipped from Afghanistan to Africa via the Indian Ocean.¹¹⁰ At this point, particularly Kenya, Uganda, and Somalia have increasingly become transit countries for trafficking heroin and cocaine to Europe, USA, China, and Turkey.¹¹¹ Further, Tu'emay asserted, "the heroin drug which comes from Asia to the IGAD region is the most prevalent ones, Kenya is number one as a transit because of its maritime domain, and the Jomo Kenyatta airport. In 2015, 400kg of a single seizure of heroin, very recently in 2017 Kenya has seized about 100kg of cocaine, and exactly after one month, the same amount seized in Djibouti and it was to be exported to Ethiopia."¹¹² Equally, illicit wildlife goods and poaching ranks as the most prevalent of TOC and becomes an important source of funding for TOC groups in the region. Recent research indicates that the bulk of the large ivory shipments from Africa to Asia appear to pass through the container ports of Kenya. It is estimated that between 5,600 and 15,400 elephants, which are poached in Eastern Africa annually, producing between 56 and 154 metric tons of illicit ivory, of which two-thirds is destined for Asia, worth around US\$30 million in 2011.¹¹³ Concerning counterfeit of goods, Kenya is the biggest market for it such as

¹⁰⁷<https://www.unodc.org/easternafrika/en/Stories/new-ethiopian-law-on-human-trafficking-and-migrantsmuggling.html> Accessed on 15 September, 2018

¹⁰⁸ Interview with Tu'emay Aregawi, Cited above at note 103

¹⁰⁹ The UNODC-ROEA, Cited above at note 22, p.4

¹¹⁰ UNODC, "The Afghan Opiate Trade and Africa: A Base Line Assessment," (UN pub, 2016), p.8

¹¹¹ J. Picarelli, Cited above at note 25, p. 39

¹¹² Interview with Tu'emay Aregawi, Cited above at note 103

¹¹³ The UNODC-ROEA, Cited above at note 22, p.5

counterfeit pesticides, sugar, motor vehicles, electronics, pharmaceuticals, batteries, food, drinks, and contraband in East Africa. The counterfeit industry is sourced mainly from India and China and is worth about \$913.8 million, rivaling key foreign exchange earners tourism and tea and coffee.¹¹⁴ There is a growing concern in Ethiopia on illegal cash flow or money laundering. The very recent assessment shows that Ethiopia is losing about 100, 000 USD per month only through the corridor of Togo-chale. In the 2012/13, the study also that makes it less than not 10 Million of USD Ethiopia was losing because of illicit foreign currency flow from Ethiopia to Somaliland via the corridor of Togo-chale.¹¹⁵

The above evidences ascertained that the IGAD region is painfully anguished by various forms of TOC's such as human trafficking, illegal smuggling of migrants, trafficking of animal's part, drug or heroin trafficking, counterfeit goods and money laundering etc. Therefore, the IGAD region becomes a cradle, passage and a depot to the various forms of TOC that detrimentally shaking the peace and security of the region.

Having said this, to safeguard the region from the perils of TOC, IGAD has been taking quite a lot of strides. Accordingly, perusals will be made to answer the question whether or IGAD has its own legal and institutional frameworks in addressing TOC.

3.5 The Legal Frameworks of IGAD in Addressing TOC

Indeed, the UNSC is a principal body charged with the responsibility of maintaining peace and security.¹¹⁶ However, *"nothing precludes the existence of regional arrangements for dealing with such matters relating to the maintenance of international peace and security...."*¹¹⁷ From this stipulation, we can realize that REC can take a responsibility for preventing threats to peace and security including TOC. In fact, IGAD is one of the eight REC's recognized by the AU through the Treaty of Abuja, and a Protocol on the Relations between the AU and the REC¹¹⁸ and entitled with the promotion of promote

¹¹⁴ Ken Opala, "Merchants of Fakes Reap Sh70bn and Put Lives and Jobs at Great Risk," Daily Nation, November 21, 2009, available at www.nation.co.ke/News/-/1056/801882/-/item/1/-/wkyff9/-/index.html accessed on 25 September 2018

¹¹⁵ Interview with Tuemay Aregawi, Cited above at note 103

¹¹⁶ The United Nations Charter (1945)

¹¹⁷ Id., Article 52(1)

¹¹⁸ The Regional Economic Communities (RECs) of the African Union, available at

peace and security in Africa.¹¹⁹ Hence, IGAD as a REC has a legal basis to react against the threats of TOC through various appliances including the taking of legal measures. Then, detecting and examination will be ventured on the legal frameworks introduced by IGAD in addressing TOC.

3.5.1 The Agreement Establishing the IGAD, 1996

It was adopted in 1996 to establish IGAD and to govern peace and security issues, among others. Decisively, Paragraph 9 of the Preamble of the Agreement professes that IGAD enthused by the noble purpose of “*promoting peace and security, and eliminating the source of conflict as well as preventing the conflict itself from the region.*” As a norm, the Agreement obliged the Member State “*to maintain and promote peace and security in the region.*”¹²⁰

Here, the Agreement puts a general obligation to preserve peace and security, instead of expressly addressing TOC. This implies that the Agreement directly enunciates nothing about TOC even if IGAD has articulated TOC as a real security threat. Comparatively, “the EAC besides recognizing TOC as a threat to the integration process explicitly stated that the threat requires partner’s states to implement measures to curb TOC including the exchange of security intelligence and MLA.”¹²¹ Though there is nothing about TOC in the Agreement, we can implicitly infer a clue about TOC from a phrase mentioned in the Agreement i.e. *preserving peace and security.*” This phrase indirectly allows IGAD to prevent TOC since it remains a security peril in the region. Thus, the IGAD Agreement can oblige the Member States to prevent any forms of TOC.

3.5.2 The IGAD Convention on Mutual Legal Assistance in Criminal Matters 2009

MLA is vital “for states to secure and provide assistance in gathering evidence for use in criminal cases,”¹²² and “quickly to pass information between law enforcement agencies

<http://www.un.org/en/africa/osaa/peace/recs.shtml> accessed on 25 September 2018

¹¹⁹ The Protocol Relating to the Establishment of the AU-PSC (2000), Cited above at note 12, Article 16(1)

¹²⁰ The Agreement Establishing the IGAD (1996), Cited above at note 91, Article 6(d) & 7(g)

¹²¹ The Treaty for Establishment of the East African Community (2000), Article 124(5)

¹²² UNODC, cited above at note 7, p.19

of various countries.¹²³ As it is stated under Article 18 of the UNTOC, in 2009, IGAD has adopted a Convention on MLA in Criminal Matters and exclusively ratified by Ethiopia and Djibouti.¹²⁴ This Convention is considered as a multilateral instrument that provides a platform to the Member States for the “obtaining of evidence and exchange of information”¹²⁵ to investigate, prosecute and convict the culprits of all forms of criminal activities.¹²⁶

The MLA Convention here declares nothing about TOC rather than saying “*all forms of criminal activities or security crimes, conducts under the law of the state.*”¹²⁷ However, the phrase “*all forms of criminal activities or security crimes*” through the canon of interpretation set forth under Article 31 of the VCLT¹²⁸ can be a yardstick to take a reference point about the implementation of MLA for TOC. The rule of interpretation inscribed in the VCLT implies that treaty may be interpreted by using “*the textual*” or “*contextual meanings of the words*” in light of the very “*objective and purpose of the treaty.*” The textual and contextual meanings of the words, in our case is the phrase “*all forms of criminal activities*” and thus, it can be construed in lights of the innate objectives and purpose of the IGAD MLA Convention i.e. “*to prevent and suppress crime and to promote peace and security.*”¹²⁹ This specifies that the phrase “*all forms of criminal activities*” is open and broad to contain any types of conducts considered as a crime and a security threat either by the domestic laws of the state and the authority itself. As it is proved, IGAD has verbalized TOC as a security threat, and in a simplest term, it is a crime. Therefore, the IGAD Convention on MLA can indirectly be used as a legal framework and an enforcement mechanism to secure pieces of evidence related to the crimes of TOC.

¹²³ L. Nagle, “The Challenges of Fighting Global Organized Crime in Latin America,” Fordham International Journal Laws, Vol 26, Issue 6, Article 5 (2002), p.1690

¹²⁴ Amicus Legal Consultants Limited and Donald Deya, 2010

¹²⁵ The IGAD MLA Convention in Criminal Matters (2009), Article 1(5)(a-r)

¹²⁶ Id., part I

¹²⁷ Ibid.

¹²⁸ The Vienna Convention on the Law of Treaties (VCLT, 1996) of Article 31(1) states, “a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its objectives and purposes”

¹²⁹ The IGAD MLA Convention (2009), Cited above at note 125, Preamble

3.5.3 The IGAD Convention on Extradition 2009

Like Article 16 of the UNTOC, “IGAD adopted an Extradition Convention as an enforcement mechanism in 2009 and only ratified by Djibouti and Ethiopia.”¹³⁰ Here, “*extradition is the surrender of a person accused or convicted of an extradition offense....*”¹³¹ This provision connotes that “extradition is permitted only for an extraditable offence,” declared by the domestic law of the Member States. As per Article 3 of the Convention, “*Extraditable offense is an offense that is punishable under the law of both the requesting and requested state party by imprisonment or other deprivation of liberty of period of at least one year.*” Indeed, the Convention specifically tells nothing about its implementation for the crime of TOC, however, the phrase “*any extraditable offenses,*” can be interpreted with respect to Article 31 of the VCLT i.e. “*the textual*” or “*contextual meanings of the words*” in light of the very “*objective and purpose of the treaty.*” The textual and contextual meanings of the words, in our case is the phrase “*any extraditable offence*” can be construed in lights of the innate objectives and purpose of the IGAD Extradition Convention i.e. “*to prevent and suppress crime and to promote peace and security.*”¹³² This specifies that the phrase “*any extraditable offence*” is open to include TOC since it has listed as a security threat in the region. Therefore, the IGAD extradition Convention is an enforcement mechanism introduced to curtail TOC.

Regarding the afore-said laws, Tu’emay said, “IGAD has an important instrument not necessarily on TOC, but generally on law enforcement cooperation such as MLA and Extradition. These tools will help a lot on containing cross-border crimes including TOC, and enhancing the capacity of law enforcement agencies to convict offenders. Nonetheless, it cannot be considered as binding legal instruments due to the reason that it is only ratified by Ethiopia and Djibouti and one more country is needed to make it operational.”¹³³ Even if, it is not binding on the Member States, and not necessarily focuses on TOC, it can be used as legal initiatives for addressing TOC.

¹³⁰ Center on Global Counterterrorism Cooperation, “Fighting Terrorism through Justice: Implementing the IGAD Framework for Legal Cooperation against Terrorism,” (May 2012), p.2

¹³¹ The IGAD Convention on Extradition (2009), Part I

¹³² Id., Preamble.

¹³³ Interview with Tuemay Aregawi, Cited above at note 103

3.5.4 The Khartoum Declaration on Combating Terrorism and TOC

The Khartoum Declaration on Combating Terrorism and TOC was issued by the Member States of IGAD in 2004.¹³⁴ In this Declaration, “the Member States of IGAD have committed for the maintenance of peace and security and combating TOC. It also perceived the dangers posed to the region by the activities of livestock rustlers, which have all characteristics of TOC and links with SALW trafficking.”¹³⁵ Importantly, the Declaration articulated TOC as a security threat and called urgent needs for cooperation’s through the appliances of the exchange of information and sharing of criminal intelligence, MLA and Extradition etc. It is also underscoring the importance of capacity building and technical assistance to the State Parties particularly in drafting and implementing legislation combating TOC, besides encouraging them to adhere with the existing international legal frameworks governing TOC.¹³⁶ Indeed, declaration is not always legally binding under international law unless parties intend to create a legal obligation.¹³⁷ To put it simply, declaration is a soft law and not legally binding on States parties. Thus, the Khartoum Declaration on combating Terrorism and TOC is a political aspiration of the Member States of IGAD and it can be used as a legal initiative though it is non-binding.

3.5.5 Memorandum of Understanding on Cooperation in the Area of Peace and Security between the AU and the REC, 2008

According to Article 16(1) of the Protocol Relating to the Establishment of the AU-PSC, REC’s are part of the overall security architecture of the union, which has primary responsibility for promoting peace and security in Africa, and this “obligation has also been reaffirmed by the MoU.”¹³⁸ The MoU recognizes the need for closer collaboration between the AU and the REC in order to address the problems posed by TOC.”¹³⁹ Here, IGAD is one of the REC’s to which it has been part of the MoU.¹⁴⁰ To promote peace and

¹³⁴ The Khartoum Declaration (2004), UNGA A/59/83-S/2004/387

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ The United Nations Treaty Collection: Treaty Reference Guide

¹³⁸ The MoU on the Cooperation in the Area of Peace and Security between the AU and the REC’s (2008), Preamble

¹³⁹ Id., Preamble and Article 5(v)(vi)

¹⁴⁰ Id., Article 1(vii)

security, the MoU ensures the exchange of information between parties,¹⁴¹strengthens the capacity of the parties¹⁴²and promotes the implementation of continental, regional and other relevant instruments pertaining to TOC's. Article 5 of the MoU dictates that TOC must be addressed by the REC's of the AU and thus, IGAD has an obligation to do so since it is party to the MoU.

Under the Law of Treaties, MOU is normally not a treaty and thus, it is not legally binding. "A MoU records international "commitments," but in a form and with wording which expresses an intention that it is not to be binding as a matter of international law."¹⁴³ The effective implementation of this MoU becomes realized if it is signed at least by five REC of the AU i.e. "MOU *shall enter into force and functional upon signature by five of the REC's of the Union.*"¹⁴⁴However, the MoU is non-binding, because it lacks full ratification from the RECs of AU including IGAD, but it can used as an initiative to address TOC.

3.5.6 The IGAD Regional Strategy and Implementation Plan (2016-2020)

The IGAD Secretariat developed a new long-term Regional Strategy in 2015 to provide a coherent framework aimed at guiding IGAD's priority development initiatives in pursuit of its vision to be the premier REC for achieving peace and sustainable development in the region.¹⁴⁵To realize these, "IGAD has developed four strategic intervention pillars; Agriculture, Natural Resources and Environment; Economic Cooperation, integration and social development, Peace and Security and Humanitarian Affairs and Corporate Development Services."¹⁴⁶

For the purpose of this study, emphasis is given to the Third Pillar of the Strategy i.e. IGAD Peace and Security Strategy. This Pillar has three program areas comprising "Conflict Prevention Management and Resolution, TST's, and Governance, Democracy,

¹⁴¹ Id., Article 3(2)(ii)

¹⁴² Id., Article 3(2)(viii)

¹⁴³ Treaties and MOU's: Guidance on Practice and Procedures, (Treaty Section Legal Directorate Foreign and Commonwealth Office, 2nd ed, 2000), p.1

¹⁴⁴ The MoU on the Cooperation in the Area of Peace and Security between the AU and the REC's (2008), cited above at 138, Article 26

¹⁴⁵ IGAD Regional Strategy Implementation Plan 2016-2002, (2016), Vol.2

¹⁴⁶ Id., p.2

Rule of Law and Human Rights,”¹⁴⁷ thereby falling under the overarching goal “to achieve sustainable peace and security for the attainment of economic integration and development in the region.”¹⁴⁸ Among these, “IGAD has been focusing on predictive, preventive, responsive and adaptive capabilities of IGAD and the Member States through policies and practices in response to TST’s relating to TOC.”¹⁴⁹ Under TST’s, IGAD proposed three comprehensive sub-programs such as strengthening regional cooperation and coordination against the existing, evolving and emerging TST’s (EET-TST), enhancing Member States and IGAD’s institutional and human capacities to address EEE-TST and promoting and supporting regional and international normative and institutional/policy frameworks to address EEE-TST.”¹⁵⁰ Indeed, the IGAD Peace and Security Strategy is designed to strengthen the capacity of member states in investigating and prosecuting EEE-TSTs including TOC and enhancing law enforcement in the region etc.¹⁵¹

The IGAD Strategic Plan is not chiefly reliant on TOC, instead, it governs matters relating to TST’s. Undeniably, TOC is branded as a part of TST’s as if it is a cross border security extortions. Moreover, Tu’emay said, “TST is an overarching term and it’s IGAD that promotes the kind of comprehensive approaches towards addressing cross border issues. But, TST is inclusive almost all forms of threats including TOC.”¹⁵² Thus, the IGAD Peace and Security Strategic can be used as a framework to address TOC though it is non-binding.

3.5.7 The IGAD Regional Migration Policy Framework (IRMPF)

The IGAD Regional Migration Policy Framework was adopted on July 11, 2012.”¹⁵³ “IGAD has been the spearhead RECs to develop a RMPF in Africa,¹⁵⁴ and “inspired by in

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

¹⁴⁹ Id., p.47

¹⁵⁰ Id., p.9

¹⁵¹ Id., p.84-85

¹⁵² Interview with Tuemay Aregawi, Cited above at note 103

¹⁵³ IGAD Regional Migration Policy Framework (IGAD-RMPF), 2012

¹⁵⁴ IGAD & IOM, “Human Trafficking and Smuggling of Migrants in the Context of Mixed Migrations Flows: State of Play in the IGAD Region,” 6th IGAD Regional Consultative Process on Migration, (2015), p.13

response to the Migration Policy Framework for Africa 2006/AU Banjul Decision Ex.CL/Dec.304 (IX).¹⁵⁵“The IRMPF typically focuses on migration-related issues.”¹⁵⁶Here the IRMPF directly shows how it is vital to address some forms of TOC such as smuggling of migrants and human trafficking. Its objectives are supporting member states in formulating and strengthening national migration policies and providing recommendations at different levels on managing migration.”¹⁵⁷Additionally, the IRMPF facilitates the harmonization of policies in migration to the State parties amongst other measures, coerced them to domesticate the UNTOC and the first two supplementary protocols, and to develop common regional countermeasures against migration.¹⁵⁸In this regard, Tu’emay further alleged that IGAD has a Migration Policy Framework focusing on key result areas such as human trafficking and smuggling of migrants. IRMPF is not a stand-alone policy framework on TOC, but it is a sideline policy framework.¹⁵⁹ Ideally, IRMPF is a guideline rather than a binding document, which must be enforced at all cost.”¹⁶⁰ Therefore, the IRMPF is a venue for the Member States of IGAD to prevent TOC’s i.e. smuggling of migrants and human trafficking.

3.6 The Institutional Frameworks of IGAD in Addressing Transnational Organized Crime

Legal frameworks for combating TOC will not be effective unless it has been armored by institutional arrangements. In doing this, IGAD has been wielding its endeavor by forming various institutional frameworks. Herein below, an appraisal will be made on the institutional frameworks introduced by IGAD for countering TOC. Indeed, IGAD contains the Assembly, the Council of Ministers, the Committee of Ambassadors, and the Secretariat as institutional set-ups.¹⁶¹Importantly, it has the power to host other specialized institutions based on Article 2(A) of the Agreement i.e. “*the Assembly may establish and locate any institution of the Authority...*”¹⁶²Based on this stipulation, some

¹⁵⁵ IGAD-RMPF, cited above at note 153, p.vi

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

¹⁵⁸ Id., p.5

¹⁵⁹ Interview with Tuemay Aregawi, Cited above at note 103

¹⁶⁰ IGAD-RMPF, cited above at note 153, p.5

¹⁶¹ The Agreement Establishing the IGAD (1996), Cited above at note 91, Article 8

¹⁶² Id., Article 2(A)

institutional frameworks have been introduced to curtail TOC in the IGAD region and these are;

3.6.1 The IGAD Conflict Early Warning and Response Mechanism (CEWARN)

The IGAD-CEWARN was established based on a Protocol on the Establishment of a Conflict Early Warning and Response Mechanism for IGAD on January 9, 2002, and signed by all Member States.¹⁶³ The need for the creation of CEWARN was due to the proliferation of SALW's, intra and interstate conflicts and violent cross-border pastoral conflicts in the region.¹⁶⁴ It's a mechanism established as a special agency to strengthen regional stability by preventing conflict through the collection and dissemination of credible and timely information and analysis.¹⁶⁵ Its initial focus was on conflicts between pastoralist communities but later in the CEWARN Strategy Framework of 2012-2019 expands significantly to focus on SALW and conflicts driven by factors that include environment, migration, ethnic and religious identity, electoral completion, and borders,¹⁶⁶ and it carry outs studies on specific types and areas of conflict in the IGAD region.¹⁶⁷

Here, CEWARN was initially focused on inter and intra-states conflicts, but latter entrusted with the responsibilities of combating SALW's and pastoralist conflicts including cattle rustling. Actually, IGAD's CEWARN does not exactly stress on TOC, but by taking inference from the SALW and crime of cattle rustling, it can tacitly be presumed as an institutional mechanism dealing with some forms of TOC. Comparatively, "the EAC has its own specific CEWARN mechanism that explicitly speaks about TOC including SALW, drug, and human trafficking, money laundering, cybercrime, cattle rustling, counterfeiting and piracy etc."¹⁶⁸ In this regard, Tu'emay echoed that "even if traditionally, IGAD's CEWARN was purely focusing on inter and

¹⁶³ About CEWARN, available at <http://www.cewarn.org/index.php/about-cewarn> Accessed on 18 October 2018

¹⁶⁴ Ibid.

¹⁶⁵ <http://www.smallarmssurvey.org/tools/ro-poa/profiles-of-regional-organizations/africa/igad.html> Accessed on 20 October, 2018

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

¹⁶⁸ J. Maroa, "Assessing East Africa Community Initiatives in Managing Emerging Cross Border Criminal Trends, (September 2013, Unpublished Thesis, University of Nairobi, Institute of Diplomacy and International Studies), p.31

intra community conflicts, but now there is an attempt to establish an indicator on Early Warning on TOC, and it's established in its system, nonetheless it has not yet been implemented.”¹⁶⁹ Therefore, IGAD has no CEWARN mechanism on TOC, but it can be used as an initiative since it actively engages in combating some forms of TOC such as SAWL and cattle rustling.

3.6.2 The IGAD Security Sector Program (ISSP)

Resulting from the revitalized IGAD Peace and Security Architecture, IGAD has sought to restructure IGAD Capacity Building Program against Terrorism (ICPAT) to the IGAD Security Sector Program (ISSP).¹⁷⁰ Evidently, the ICPAT was created in 2006, and its goals were building national capacity to resist terrorism and promoting regional securing cooperation.¹⁷¹ However, in October 2010, ICPAT was replaced by the ISSP, whose expanded mandate to include various TST's such as Terrorism, TOC and Maritime Security.¹⁷² Tu'emay further said, “ICPAT was replaced into ISSP because of the reason that IGAD realized terrorism could not be addressed by simply focusing on its forms; rather terrorism is linked with TOC activities.”¹⁷³ ISSP was established with the striking missions of fostering peace, security, sustainable development, and regional economic integration, and enhancing the effectiveness of the Member States security sector to address common transnational, regional and national security threats.¹⁷⁴ ISSP is institutionalized principally to address TST's including TOC and to realize its striking missions, four significant pillars have been established such as TOC, Maritime Security, the Security Institutions Capacity Building and Terrorism Pillars. For the purpose of this study, an analysis will be made on the first three pillars.

3.6.2.1 Transnational Organized Crime Pillar

The TOC Pillar was established under the benefactions of ISSP in 2010. This pillar has entrusted with the functions of undertaking TOC's Threat Assessment (TOCTA) that

¹⁶⁹ Interview with Tuemay Aregawi, Cited above at note 103

¹⁷⁰ <https://www.igadssp.org/index.php/about-us-main-menu/background> Accessed on 25 October, 2018

¹⁷¹ Ibid.

¹⁷² IGAD and Sahan Foundation, Cited above at note 27, p.6

¹⁷³ Interview with Tuemay Aregawi, Cited above at note 103

¹⁷⁴ <https://www.igadssp.org/index.php/about-us-main-menu/objective-mission> Accessed on 26 October, 2018

contributes to the enhancement of knowledge on the vulnerability and threats in the region and developing regional legal and institutional frameworks aimed at preventing TOC both at the regional and national levels. It is also tasked with the consolidation of regional capability by providing capacity building and technical assistance on matters related to preventing, detecting, investigating, and prosecuting of TOC and promoting and strengthening regional information and intelligence sharing and cooperation in the region.¹⁷⁵ The Pillar covers various forms of TOC including drug and psychotropic substances trafficking, illicit trade, human trafficking and smuggling of migrants, SAWL trafficking, money laundering and terrorist financing, illicit financial flows, counterfeiting and intellectual property rights related crimes and cybercrime etc. The modus operandi of TOC activities in the region is very complex and multifarious and demands cooperation with the existing intra-institutions of IGAD.¹⁷⁶ Here, the TOC Pillar is secured a power to conduct a threat and vulnerability assessment on TOC like what is undertaking by UNODC, and this function is vital to reinforce the capability of IGAD in detecting the emerging threats of TOC and to formulate conceivable solutions to the articulated threats, which pervade the peace and security of the region. Therefore, the TOC Pillar is an imperative institutional framework introduced by IGAD particularly to govern the menaces of TOC, even if a function is limited to promotion of capacity building and technical assistance and exchange of information and sharing of criminal intelligence cooperation.

3.6.2.2 The Security Institutions Capacity Building Pillar (SICB)

The SICB Pillar was established to enhance the capacity for forecasting and preventing contemporary security threats including TOC. This Pillar is entrusted with the powers of providing capacity building for enhancing both human and institutional capacity of law enforcement institutions and developing regional legal frameworks governing security institutions.¹⁷⁷ Furthermore, it organizes technical consultative meetings to enhance regional cooperation among peace and security specialized committees, conducting of the

¹⁷⁵<https://www.igadssp.org/index.php/components-mainmenu/transnational-organized-crime> Accessed on 30 October, 2018

¹⁷⁶ Ibid.

¹⁷⁷<https://igadssp.org/index.php/components-mainmenu/security-institutions-capacity-building> accessed on 05 November, 2018

needs assessment of security institutions include judiciary, police, military, immigration, customs, intelligence, financial intelligence institutions, civil authorities and promote IGAD wide information Sharing and regional cooperation.¹⁷⁸ Like the TOC Pillar, the power entrusted to the SCIB is inherently limited to provisions of capacity building and promotion of information sharing cooperation. Comparatively, the mandates of the SICB is similar with the “West African Network of Central Authorities and Prosecutors against Organized Crime (WACAP) introduced by ECOWAS, which is a platform to build the capacity of judges and prosecutors to address organized and serious crime and facilitates legal assistance at the regional and inter-regional levels.”¹⁷⁹ Therefore, the SCIB pillar can also be taken as an institutional framework established by IGAD to fight TST including TOC.

3.6.2.3 The Maritime Security Pillar

This Pillar was established to enhance the capacity of Member States of IGAD in responding against Maritime security threat,¹⁸⁰ which typically a form of TOC. The capacity is provided by developing, ratifying and domestication of international and regional maritime security-related legal governances. Further, it is developed to facilitate security cooperation and mutual defense at the sea and mutual assistance on judicial matters on maritime security, besides seeking the implementations of international legal frameworks for countering fish piracy.¹⁸¹ Regarding this, Tu’emay said, “maritime security is not only about piracy; rather it goes beyond that because over the sea or over the maritime, there are other forms of TOC.”¹⁸² Thus, IGAD has a separate institutional arrangement to address a particular form of TOC i.e. maritime piracy.

3.6.3 The IGAD Regional Migration Coordination Committee (IRMCC)

All Member States of IGAD except Kenya and Ethiopia have signed the Declaration establishing the IRMCC in 2011. It is introduced as an integral mechanism to implement the IRMPF. IRMPF is a tangible indicator of IGAD’s compliance with the AU Assembly

¹⁷⁸ Ibid.

¹⁷⁹ The UNODC Regional Program for West Africa, p.52

¹⁸⁰ <https://igadssp.org/index.php/components-mainmenu/maritime-security> accessed on 08 November, 2018

¹⁸¹ Ibid.

¹⁸² Interview with Tuemay Aregawi, Cited above at note 103

Decision in Banjul that urged all Member States and RECs to develop national and regional policy frameworks based on the Migration Policy Framework for Africa.¹⁸³ IRMCC is designed with the objectives of facilitating information sharing and coordination among Member States of IGAD related to migration challenges¹⁸⁴ i.e. smuggling of migrants. It's also entrusted with key functions to articulate a continental and regional position on migration issues to the Member States, and to facilitate implementation of regional and national migration programs etc.”¹⁸⁵ Like other institutional frameworks, IRMCC is chiefly reliant on the promotion of capacity building and information sharing cooperation. However, IRMCC is an institutional framework designed by IGAD to address migration related crimes i.e. smuggling of the migrant.

¹⁸³<http://migration.igad.int/wp-content/uploads/2017/02/1st-IGAD-RMCC-Report.pdf> Retrieved on 10 November, 2018

¹⁸⁴[Ibid.](#)

¹⁸⁵[Ibid.](#)

CHAPTER- FOUR

The Roles of IGAD in Addressing Transnational Organized Crimes

4.1 Introduction

In this chapter, an analysis made on the practical roles of IGAD and Member States in addressing TOC together with the challenges associated with the deeds of IGAD towards the threat.

4.2 What are the Practical Roles of IGAD for Addressing TOC?

IGAD has been contributing to the maintenance of peace and security in the region by the taking of various actions against TOC. Thus, hereinafter, an examination will be made on the pragmatic roles undertaking by IGAD for addressing TOC.

4.2.1 Articulation of the Threats of TOC in the Region

An effort to lessen the scourge of TOC presupposes the requisite to appreciate the prevalence of the threats with its repercussions. Regarding this, scholars Ernesto Savona and Barbara Vettori admit that “*Understanding the harm done by TOC’s and tracing these harms can be of assistance for policymakers implementing law enforcement policies, allocating financial resources, and evaluating those measures that were taken towards the problems.*”¹⁸⁶In doing this, in 2014, IGAD in cooperation with the Global Initiative against TOC conducted a Vulnerability and Threat Assessment on TOC and identified various organized criminal activities in the region.¹⁸⁷ Tu’emay said that Member States of IGAD have felt TOC becomes prevalent and posing significant threats in the region and that is why IGAD came up with the Peace and Security Strategy and in a process of undertaking further regional vulnerability and threats assessment.¹⁸⁸ The Report identified several forms of TOC, which demands a dire concern in the region such as illicit trade, maritime piracy, smuggling of migrants, human trafficking and trafficking of environmental products etc.”¹⁸⁹ Significantly, Tu’emay vowed that, based on the

¹⁸⁶ E. Savona and B. Vettori, “Evaluating the Cost of Organized Crime from a Comparative Perspective” European Journal on Criminal Policy and Research., (2009), p.380

¹⁸⁷ IGAD and the Global Initiatives, Cited above at note 26, p.78

¹⁸⁸ Interview with Tuemay Aregawi, Cited above at note 103

¹⁸⁹ IGAD and the Global Initiatives, Cited above at note 26, p.6

Report, IGAD tried to trace the human smuggling networks routes, the Horn of Africa to Europe via the central Mediterranean, and managed to list kingpins of human smuggling and trafficking in the region. It was even somewhat successful based on providing information's to both Ethiopia, Somalis and Sudan authorities to secure arrests of criminals and also helped them on how they can help each other to exchange names of the criminal gangs of TOC.”¹⁹⁰Therefore, articulation of the threats of TOC is one of the major achievements recorded by IGAD in the fight against TOC.

4.2.2 Encouraging Member States to Adhere with International and Regional Legal Instruments for Addressing TOC

IGAD is playing a vigorous role in encouraging Member States to ratify, to observe and to domesticate the existing international and regional legal regimes governing TOC. For example, regarding the UNTOC, Ethiopia, Sudan and Uganda have ratified it. Djibouti, Eritrea and Kenya have acceded it, but South Sudan and Somalia are non-signatories.¹⁹¹Concerning the supplementary protocols, the Trafficking in Persons Protocols has only been ratified by Ethiopia¹⁹² and acceded by all Member States except Somali and South Sudan.¹⁹³The Smuggling of Migrants Protocol has only been ratified Ethiopia¹⁹⁴ and acceded by Kenya, Djibouti and Uganda.¹⁹⁵The Firearms Protocol has only ratified Ethiopia¹⁹⁶ and acceded by Kenya and Uganda.¹⁹⁷About the IGAD legal frameworks, both the IGAD Convention on MLA and Extradition have only been ratified Ethiopia and Djibouti while full ratification is still being encouraged by IGAD. Even though full ratification is still being demanded, IGAD has been in progress of encouraging the Member States to ratify, to observe and to domesticate the said legal instruments, and the majority of IGAD's Member States are parties to them and

¹⁹⁰ Interview with Tuemay Aregawi, Cited above at note 103

¹⁹¹ CTOC/COP/2018/CRP.1, Cited above at note 45

¹⁹² The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children Ratification Proclamation No. 735/2012, the Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition Ratification Proclamation No. 736/2012 and the Protocol against the Smuggling of Migrants by Land, Sea and Air.

¹⁹³ CTOC/COP/2018/CRP.1, Cited above at note 45

¹⁹⁴ Cited above at note 192

¹⁹⁵ CTOC/COP/2018/CRP.1, Cited above at note 45

¹⁹⁶ Ibid.

¹⁹⁷ Ibid.

accordingly, it is significant to minimize the vulnerability of IGAD from the threat of TOC.

4.2.3 Providing Capacity Building and Technical Assistance to the Member States

A provision of capacity building and technical assistance is an enforcement mechanism introduced to stem all forms of TOC worldwide. Equally, IGAD has charged with the responsibility of providing capacity building and technical assistance to the Member States to excel their capacities in the fight against TOC. Regarding the actual practice of IGAD, Tu'emay elucidated that, "by far, the ISSP is working in building the capacity of Member States relevant institutions on how they can better prevent, investigate and prosecute TOC."¹⁹⁸ Moreover, IGAD has provided various capacity building assistance to the Member States. Just to mention a few:

*On August 2014, TOC Pillar convened a training on "Promoting International and Regional Legal Instruments on Preventing and Countering TOC" to all Member States in Sudan. The training was dedicated to promoting the existing international legal regimes, enhancing the knowledge of Member States about relevant tools and standards designed to facilitate ratification and implementation of the tools and strengthen regional cooperation to prevent TOC."*¹⁹⁹ *"In the same year, the ISSP concluded a High-Level Regional Workshop on "promoting and enhancing awareness about the content and importance of the IGAD Conventions on MLA and Extradition and creating a consensus among participants to facilitate the ratification and implementation of the Conventions" in Addis Ababa. It was also covered the international legal instruments for cooperation in fighting TSTs including TOC (drug trafficking, human trafficking and smuggling, firearms trafficking, money laundering, terrorism financing, cybercrime, smuggling of goods, animal poaching etc.). Most importantly, Recommendation was also made for ISSP to establish mechanisms for monitoring the ratification and implementation of the two conventions."*²⁰⁰

¹⁹⁸ Interview with Tuemay Aregawi, Cited above at note 103

¹⁹⁹ <https://igad.int/divisions/peace-and-security/948-issp-concluded-a-regional-workshop-on-transnational-organized-crime-toc> Retrieved on November 20, 2018

²⁰⁰ <https://igad.int/divisions/peace-and-security/957-igad-conventions-on-mla-and-extradition-promoted> Accessed on November 20, 2018

These indicate how IGAD is exerting its efforts in minimizing the vulnerabilities of IGAD from the emerging threats of TOC by providing capacity building assistance to the member states. Actually, the above instances are not the only assistance provided by IGAD, other several assistances were also offered and yet being given. Tu'emay has rightly said, "Since the inception of ISSP, a very detailed technical and capacity building assistance have been giving to the Member States of institutional apparatuses whose mandate is preventing and criminalizing culprits of TOC."²⁰¹ Therefore, the capacity building and technical assistance that is providing by IGAD is a major triumph which tremendously enhancing the capacity of the Member States for addressing the detrimental effects of TOC.

4.2.4 Encouraging Member States to Adopt Exchange of Information and Sharing of Criminal Intelligence System

In the absence of effective information exchange and sharing of the criminal intelligence system, TOC cannot effectively be suppressed. Unlike EAC,²⁰² IGAD has no direct laws that explicitly govern the exchange of information and sharing of criminal intelligence on TOC. However, IGAD is engaging in encouraging Member States to adopt the exchange of information and sharing of the criminal intelligence system that is vital for securing pieces of evidence for TOC. Regarding this, Tu'emay stated, "IGAD has the intention of establishing a kind of Regional Operative Unit that routinely undertakes information gathering and intelligence analysis for the sake of disrupting TOC. Moreover, he revealed, "the issue of establishing information gathering and intelligence analysis is beyond the agenda of the IGAD table. In addition, training was also convened on technical matters on how to develop the ability of criminality intelligence analysis, how police officials can gather criminal intelligence and information, how they can analyze it, how they can set and build scenarios, and how they can disseminate information's."²⁰³ Therefore, even if IGAD has no specific exchange of information and sharing of criminal intelligence system for combating TOC, it has been playing a vital

²⁰¹ Ibid.

²⁰² The Treaty for Establishment of the East African Community (2000), Cited above at note 121, Article 9 provides that the States Parties shall exchange information on goods and publications known to be the subject of illicit traffic and maintain special surveillance over the movement of such goods and publications.

²⁰³ Interview with Tuemay Aregawi, Cited above at note 103

role in encouraging the Member States to adopt the system, and further exerting its endeavors to establish a regional system.

4.2.5 Inspiring Member States to Fight TOC through Cooperation

The efforts to address TOC become resilient since there is cooperation among various stakeholders. Rodrigo Paris-Steffens marked that, “*Just as the organized crime could not exist without international cooperation, the only possibility of combating contemporary organized crime is through international cooperation.*”²⁰⁴ The former UN Secretary General Ban Ki-Moon was also said, “*With TST’s, states have no choice but to work together. Since we are all affected-whether as countries of supply, trafficking or demand, and therefore, we have a shared responsibility to act.*” This insight has been recapped under Article 1 of the UNTOC i.e., *the convention promotes cooperation to prevent and combat TOC more effectively*. In doing this, IGAD has the experiences of working in cooperation with various global actors, which utterly engages on matters pertaining to peace and security. As well, IGAD bequeathed large possibilities to the Member States for maintaining peace and security through cooperation in a wider context and combating the threats of TOC in particular as if inscribed under the Agreement Establishing of IGAD.²⁰⁵

Significantly, as per this provision, IGAD puts an obligation on the Member States to take effective collective measures to eliminate all types of threats to the Peace and Security of the region including TOC. In other word, the legal regime indirectly charts out IGAD to encourage and inspire Member States to work in cooperation with various stakeholders for combating TOC.

4.3 The Roles of Member States in Addressing TOC within the Canopy of IGAD

Besides the efforts of IGAD, Member States have also cognizant of the threats posed by TOC and actively taking significant measures to mitigate the scourge of the threats. Pursuant to Article 18(a) of the IGAD Agreement, “*Member states shall act collectively*

²⁰⁴ C. Guymon, Cited above at note 36, p.54

²⁰⁵ The Agreement Establishing the IGAD (1996), Cited above at note 91, Article 18(a) states that, “Member states shall act collectively to preserve peace, security and stability, which are essential prerequisite for economic development and social progress.

to preserve peace, security and stability.” Hence, it is clear that Member States of IGAD have an obligation to take collective measures to eliminate all forms of threats including TOC. Hereafter, an examination will be made on the commitments of Member States in supporting the roles of IGAD for combating TOC.

4.3.1 Ethiopia

Ethiopia is wrestling with the threats of TOC including human trafficking; smuggling of migrants, drug trafficking and cross-border cash flows etc. To curtail this threat, Ethiopia has playing its significant roles in the IGAD region. These pragmatic approaches are;

Nationally, Ethiopia has recently enacted legal frameworks for combating the threats of TOC. These are the Prevention and Suppression of Trafficking in Persons and Smuggling of Migrants Proclamation No. 909/2015,²⁰⁶ Article 18(2) of Constitution, the Revised Criminal Code 1996, Overseas Employment Proclamation No. 923/2016²⁰⁷ and the Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation No. 780/2013. As well, a National Five Year Strategic Plan has also been established in line with Second Ethiopia’s National Growth and Transformation Plan (GTP II-2016-2020) to deter human trafficking.²⁰⁸ Significantly, Ethiopia established institutional frameworks to implement the afore-said laws including National Council against Human Trafficking and Smuggling,²⁰⁹ the Federal Attorney General, Financial Intelligence Centre, Federal Anti-corruption, Public Financial Services and Public Procurement Inspection.”²¹⁰

At the IGAD level, Ethiopia becomes party to the IGAD law enforcement mechanisms such as the Conventions on MLA,²¹¹ and Extradition Convention²¹² upon the approval of

²⁰⁶ The Prevention and Suppression of Trafficking in Persons and Smuggling of Migrants Proclamation No. 909/2015, designed with the objective to provide adequate protection, support, and rehabilitation to victims of trafficking and to impose severe penalties on culprits.

²⁰⁷ The Overseas Employment Proclamation no. 923/2016, enacted with the objective to fight to human trafficking.

²⁰⁸ Ethiopia’s National Growth and Transformation Plan (GTP II-2016-2020)

²⁰⁹ “Human Trafficking and Smuggling on the Horn of Africa-Central Mediterranean Route” (Sahan Foundation and IGAD-Security Sector Program, February 2016), p.33

²¹⁰ IGAD and the Global Initiatives, Cited above at note 26, p.78

²¹¹ A Proclamation to Ratify the IGAD Convention on Mutual Legal Assistance in Criminal Matters No. 732/2012

²¹² A Proclamation to Ratify the IGAD Convention on Extradition No. 732/2012

the HPR as of February 2012. Moreover, “it is an active participant in the Joint Border Management Committee established with Kenya, Djibouti, Sudan, and South Sudan. The Committee is a manifestation of cross-border collaborations made among the Member States of IGAD for deterring trafficking in persons and smuggling of migrants and safeguarding victims through better border management and information sharing.”²¹³

At bilateral level, Ethiopia has an MLA Agreement with Sudan in 2014,²¹⁴ Extradition Agreement with Djibouti on April 1994²¹⁵ and currently negotiating an Extradition arrangement with Kenya.²¹⁶

Globally, Ethiopia is party with various international legal instruments governing TOC. For instance, Ethiopia ratified the UNTOC on 23 July 2007,²¹⁷ and the three Supplementary Protocols have been ratified on 22 June 2012.²¹⁸ As well, an exertion has been made by Ethiopia to align these international instruments into its national laws pursuant to Article 9(4) of the FDRE Constitution i.e. “*All international agreements ratified by Ethiopia are an integral part of the law of the land.*” Here, the Constitution provides a basis for the domestication of all international instruments ratified by Ethiopia for combating TOC in its legal system. Thus, the regional and global legal instrument to which Ethiopia is party becomes the law of the land upon the approval of HPR. As an evidence, the IGAD MLA and Extradition Conventions become parts of the law of the land through the IGAD Convention on Extradition Ratification Proclamation, No 732/2012 and the IGAD Convention on MLA in Criminal Matters Ratification Proclamation, No 732/2012.

²¹³ The IGAD RCP Reports (2015), p.19

²¹⁴ Mutual Legal Assistance in Criminal Matters Agreement between Ethiopia and Sudan Ratification Proclamation No 874/2014

²¹⁵ A Proclamation to Ratify the Treaty on Extradition between the Transitional Government of Ethiopia and Djibouti no. 104/1994

²¹⁶ Center on Global Counterterrorism Cooperation, cited above at note 130, p.7

²¹⁷ Ibid.

²¹⁸ Cited above at note 192

4.3.2 Kenya

Kenya has been devastated by and becomes a hub for TOC activities²¹⁹ including cattle rustling, drug trafficking, counterfeit of goods, trafficking in wildlife products, the smuggling of migrants and trafficking of humans, trafficking in small arms and piracy.²²⁰ To address TOC, Kenya has also taken far-reaching strides. These strides are:

Nationally, Kenya passed the Prevention of Organized Crime Bill in 2010 that particularly focuses on “organized crime and criminalize participation in an organized criminal group,”²²¹ obstruction of justice within the context of OC,”²²² and “tracing, confiscation, seizure, and forfeiture of property obtained in OC.”²²³ This Bill clarified that Kenya has a comprehensive legal framework, which governs TOC. The Bill has decisively listed the types of crimes, which remained to be TOC and contains various law enforcement mechanisms including criminalization’s of TOC, obstruction of justice, tracing, confiscation, seizure and forfeiture of proceeds obtained from TOC, Extradition and MLA.²²⁴ Moreover, the Mutual Legal Assistance Act of 2011, the Counter Trafficking in Persons Act No. 8 of 2010 and the Anti-Money Laundering Act of 2009 have separately been devised to supplement the parent Act i.e. the Bill. Significantly, Kenya introduced institutional frameworks, which among others, “Ethics and Anti-Corruption Commission, Public Procurement Oversight Authority, Financial Reporting Center, Anti-Money Laundering Advisory Board, Asset Recovery Agency, Criminal Assets Recovery Fund, Anti-Human Trafficking Unit etc.”²²⁵ Astoundingly, Kenya established an independent Prosecutorial Authority i.e. the Office of the Director of Public Prosecution (the so-called ODPP) to address explicitly the crimes of TOC including trafficking in drugs and trafficking in persons, money laundering, wildlife and forest crime, and cybercrime among others.”²²⁶

²¹⁹ M. Shaw (edi), Jay Albanese and Philip Raichel, Cited above at note 106, p. 102

²²⁰ Comprehensive Research Report on Transnational Organized Crime in Kenya, the International Peace Institute, available at www.ipinst.org Retrieved on December 03, 2018

²²¹ The Prevention of Organized Crime Bill of Kenya (2010), Article 3-7

²²² Id., Article 8-14

²²³ Id., Article 15-19

²²⁴ Id., Article 21 & 24

²²⁵ IGAD and the Global Initiatives, Cited above at note 26, p.78

²²⁶ A/CONF 222/G/KENYA (9th April 2015), p.3 available at

At the IGAD level, Kenya is yet to ratify the IGAD Conventions on MLA and Extradition, pending passage of the ratification bill by the assembly.²²⁷ Globally, Kenya has significantly contributing to combat TOC by acceding the UNTOC and the supplementary Protocols thereto in January 2005,²²⁸ even if these laws are not yet ratified.

4.3.3 Somalia

Since 1991, the absence of effective central government in Somalia triggered for a various surge of TOC including maritime piracy²²⁹ and illicit SALW etc.²³⁰ Even though Somalia is a fragile state, a bit efforts have been made to respond against TOC.

Article 322 and 11 of the Somalia Penal Code of 1962 states that “committing an organized crime is punishable with imprisonment from three to seven years,” and Provides extradition as a means of securing criminal arrest respectively.”²³¹ Moreover, to prevent trafficking of persons, Article 14 of the Somalia Constitution states “a person may not be subjected to slavery, servitude, trafficking, or forced labor for any purpose.”²³² These are some of the legal measures taken by Somalia in responding against TOC nationally.

At the IGAD level, Somalia is not yet party to the IGAD Convention on MLA and Extradition, but “it has signed the IRMCC to engage in the efforts to fight informal migration i.e. smuggling of migrants.”²³³ Globally, Somalia is not yet party to the UNTOC and the Supplementary Protocols thereto.²³⁴ Nevertheless, it is party to the Riyadh Agreement covering Extradition and MLA.²³⁵ Here, the contribution of Somalia in

<https://www.unodc.org/documents/congress/Documentation/HLSstatements/transfer/KENYA.pdf> Accessed on December 04, 2018

²²⁷ Center on Global Counterterrorism Cooperation, cited above at note 130, p.8

²²⁸ CTOC/cop/2016/CRP.1 Status of Adherence to the UNTOC and the Protocols thereto, 4 October 2016

²²⁹ J. Maroa, cited above at note 168, p.53

²³⁰ P. Wezeman, “Arms flows and the conflict in Somalia,” (2010)

available at <http://books.sipri.org/files/misc/SIPRIBP1010b.pdf> Accessed on December 08, 2018

²³¹ IGAD and the Global Initiatives, Cited above at note 26, p.25

²³² IGAD RCP Report, cited above at note 213, p.24

²³³ <http://migration.igad.int/wp-content/uploads/2017/02/1st-IGAD-RMCC-Report.pdf>

Retrieved on December 08, 2018

²³⁴ CTOC/cop/2016/CRP.1, Cited above at note 228

²³⁵ The Riyadh Arab Agreement for Judicial Cooperation (1983)

responding against TOC in the IGAD region is extremely weak in comparison with the rest of IGAD Member States, due to the reason that Somalia is traumatized by intrastate conflicts.

4.3.4 Uganda

Uganda is languishing by the threats of TOC including illegal human trafficking, wildlife trafficking, smuggling of migrants, ivory and charcoal trafficking, and illicit counterfeit goods etc. To curtail TOC, measures have been taken and these are:

Nationally, Uganda enacted laws including “the Prevention of Trafficking in Persons Act of 2009,²³⁶ to suppress illegal human trafficking, the Wildlife Statute Act of 2000,²³⁷ to tackle of wildlife crime and Uganda Penal Code Act focuses on the act of illegal counterfeit goods etc.”²³⁸ Further, Uganda established institutional frameworks including a National Anti-Human Trafficking Task Force²³⁹ that has a responsibility of combating human trafficking, and “Uganda Wildlife Authority entrusted with the mandates of combating wildlife and animals trafficking.”²⁴⁰

Uganda is not yet a party to the IGAD Convention on MLA and Extradition.²⁴¹ Globally, on 3 December 2015, Uganda signed a MoU Launching Container Control Programmed with UNODC in order to tackle trafficking of illicit goods such as drugs, firearms, weapons of mass destruction, nuclear material, and other forms of TOC activities.²⁴² Uganda ratified the UNTOC and acceded the Supplementary Protocols of thereto.²⁴³

4.3.5 South Sudan

South Sudan is a non-signatory state towards the UNTOC and the Supplementary Protocols thereto²⁴⁴ and the IGAD Convention on MLA and Extradition. However

²³⁶ The Prevention of Trafficking in Persons Act of Uganda (2009)

²³⁷ Traffic Report: Uganda Wildlife trafficking Assessment, 200

²³⁸ The Uganda Penal Code Act in Chapter 120, Article 139(1)(c)

²³⁹ The Prevention of Trafficking in Persons Act of Uganda (2009), Cited above at note 236, Section 21

²⁴⁰ <http://www.ugandawildlife.org/> Accessed on December 07, 2018

²⁴¹ <https://www.refworld.org/docid/3ae6b4d238.html> accessed December 07, 2018

²⁴² <http://www.unodc.org/easternafrika/en/Stories/unodc-signs-an-mou-with-the-governmnet-of-uganda-to-launch-the-container-control-programme-.html> Retrieved on December 07, 2018

²⁴³ CTOC/COP/2018/CRP.1, Cited above at note 45

²⁴⁴ South Sudan: UNODC resumes partnership to combat Trafficking in persons, available at

nationally, South Sudan has undertaken some efforts to fight some forms of TOC including trafficking of persons and smuggling of migrants. For instance, to criminalize trafficking of persons, South Sudan enacted the Penal Code Act of 2008 and Anti-Corruption Commission was also established to avoid the cause for the prevalence of TOC,²⁴⁵ and enacted a raft of laws on migration in 2011 to deter illicit migratory movements.²⁴⁶

4.3.6 Sudan

Sudan has also been exerting its efforts in responding against TOC. Nationally, since there is no particular law governing TOC, Article 65 and 176 of the Sudanese Criminal Law of 1991 criminalizes the participation in an organized criminal group and racketeering, and Law against Money Laundering and Financing Terrorism was adopted in 2010. Further, “in 2014, Sudan issued an Act to Combat Trafficking in Human Beings and established a National Committee to combat human trafficking.”²⁴⁷

At the IGAD level, Sudan is not yet party to the IGAD Convention on MLA and Extradition. Bilaterally, “Sudan has an MLA and Extradition arrangements with Ethiopia on March 2014.”²⁴⁸ Globally, Sudan ratified the UNTOC on 10 December 2004 and acceded only the Protocol in Trafficking of Persons in 2014.²⁴⁹

4.3.7 Djibouti

Djibouti is facing TOC’s including maritime insecurity, human trafficking and smuggling of migrants etc. Djibouti has also exerted its efforts for combating TOC.

Nationally, Djibouti has no detailed laws governing TOC, but the specific offense of trafficking in persons was established in 2007.²⁵⁰

https://www.unodc.org/middleeastandnorthafrica/en/web-stories/south-sudan_-unodc-resumes-partnership-to-combat-trafficking-in-persons.html Accessed on December 09, 2018

²⁴⁵ IGAD and the Global Initiatives, cited above at note 26, p.25

²⁴⁶ IGAD RCP Report, cited above at note 213, p.25

²⁴⁷ The Launch of National Action Plan to Combat Human Trafficking of Sudan, Available at <http://www.svdaily.net/index.php/new-posts/reports/10865-the-launch-of-national-action-plan-to-combat-human-trafficking> Accessed on December 09, 2018

²⁴⁸ Center on Global Counterterrorism Cooperation, cited above at not 130, p.7

²⁴⁹ CTOC/cop/2016/CRP.1, Cited above at note 228

²⁵⁰ The Global Report on Trafficking in Person in Eastern Africa by UNODC

Djibouti was the first Member State to ratify the IGAD Conventions on MLA and Extradition.²⁵¹ Bilaterally, Djibouti has an MLA and Extradition arrangements with Ethiopia. The UNTOC and its supplementary Protocols except the Firearms Protocols have been acceded by Djibouti in 2005,²⁵² and ratification is still far behind.

4.3.8 Eritrea

Eritrea is facing illegal trafficking of humans and smuggling of migrants and to combat these threats, Eritrea has exerted its efforts. For instance, Eritrea has acceded both the UNTOC and the Trafficking in Persons Protocol on 25 September 2014,²⁵³ but the remaining two supplementary Protocols are not yet ratified. The specific offense of trafficking in persons was established in the Penal Code of 1957.²⁵⁴

Eritrea is not a party to the IGAD Convention MLA and Extradition. The contribution of Eritrea in the fight against TOC in the IGAD region is futile due to the reason that it has been suspended and withdraw from IGAD since 2007, and “it was walking into the sanctions trap of UN.”²⁵⁵

Here, the analysis proved that all Member States of IGAD have taken both legal and institutional measures to fight TOC. Comparatively, Kenya, Ethiopia and Uganda’s roles are in a good progress of fighting TOC by devising laws emphasizing on various forms of TOC while others role i.e. Somalia, South Sudan, Eritrea and Djibouti are very trivial. Significantly, Kenya has a specific legal regime governing TOC and listed categories of TOC and adopted exchange of information and intelligence, while others have nothing.

Available-at, http://www.unodc.org/documents/human-trafficking/Country_profiles/East_Africa.pdf
Retrieved on December 09, 2018

²⁵¹ Center on Global Counterterrorism Cooperation, cited above at not 130, p.7

²⁵² CTOC/cop/2016/CRP.1, Cited above at note 228

²⁵³ Strategy and Regional Plan of Action: Smuggling and Trafficking from the East and Horn of Africa, Progress Report UNHCR, (2014), p.3-4

²⁵⁴ The Global Report on Trafficking in Person in Eastern Africa by UNODC, Cited above at note 250

²⁵⁵ The UNSC’s Sanctions on Eritrea Revisited, available at
<http://eritreamearb.blogspot.com/2010/01/unscs-sanctions-on-eritrea-revisited.html>

Accessed on December 10, 2018

4.4 The Recurring Challenges Associated with the Roles of IGAD in Addressing TOC

Despite its significant achievements, IGAD has facing various restrictions that derail the efforts to fight TOC. Hereinafter, an analysis will be made on the recurring challenges, which impede the endeavors of IGAD in addressing TOC.

4.4.1 The Conflict-Prone Nature of the Region

The conflict-prone nature of the region is sufficient to frustrate the efforts to implement the regional peace and security architecture.²⁵⁶ Perceptibly, the IGAD region is extremely branded as unsecured constituency due to its poorly managed borders, intra and interstate conflicts and grievied with complex TST's; terrorism, piracy, illegal cross-border cash flows, illegal firearms trafficking, human trafficking, ivory trafficking and smuggling of migrants.²⁵⁷ These plagues have created conducive environment to the spread of TOC and that are readily exploited by organized criminal networks. "TOC in conflict-affected and fragile states have the potential to destabilize the region."²⁵⁸ Thus, the conflict-prone nature of the region is paralyzing the capability of IGAD in thwarting the spiral of TOC.

4.4.2 Lack of Common Understanding on What Qualifies as TOC

As it is discussed, the absence of universal consensus as to what qualifies TOC is a major challenge for the effective implementations of the legal frameworks governing TOC. IGAD is not an exception in this regard, and even it has been retold by Tu'emay. He said that, "the definition revealed in the UNTOC focuses solely on the criminal group, rather than the crime itself, and mostly IGAD has no a common understanding and definition of what qualifies TOC in its peace and security architectures."²⁵⁹ Thus, its non-existence in

²⁵⁶ Alemayehu F Weldemariam, "A Nascent Peace and Security Architecture in the Horn of Africa: Prospect and Challenge," *Horn of Africa Bulletin*, Vol. 22, No. 3 (SSRN, March 2010), p.2

²⁵⁷ <https://igad.int/divisions/peace-and-security/1928-ethiopia-and-djibouti-meet-to-map-and-analyze-cross-border-security-threats-and-criminal-networks-between-the-dewele-and-tog-wajaale-corridor> Accessed on 11 December, 2018

²⁵⁸ Alex de Waal (Reviewer), *Security and Organized Crime in Africa: Scope, Lessons and Strategies for Combating*, available at <https://alulafrica.wordpress.com/2013/04/08/security-and-organized-crime-in-africa-scope-lessons-and-strategies-for-combating-alula-iyasu-reviewed-by-professor-alex-de-waal/> Accessed on December 12, 2018

²⁵⁹ Interview with Tuemay Aregawi, Cited above at note 103

the IGAD legal instruments disconsolately becomes a dire challenge, which impedes the roles of IGAD for addressing TOC more effectively.

4.4.3 Lack of Specific Regional Legal Framework's on TOC

IGAD has taken some legal measures to counter TOC such as the Agreement Establishing the IGAD, the IRMPF, the Khartoum Declaration on Combating Terrorism and TOC, the IGAD Convention on Extradition and MLA and the IGAD Peace and Security Strategy etc. However, none of them is specific and comprehensive to facilitate the struggles of IGAD against the emerging threats of TOC. In the support of this argument, Tu'emay said that "IGAD has no comprehensive legal frameworks that explicitly addressing TOC, instead exclusively emphasize on the overarching threats of TST's."²⁶⁰ The afore-said laws introduced by IGAD can utterly be seen as initiatives, instead of being considered as legally binding instruments on matters pertaining to TOC. Therefore, lack of comprehensive and specific legal frameworks governing TOC is another restriction that hampers the efforts of IGAD.

4.4.4 Lack of Monitoring Body in the Institutional Frameworks of IGAD

For the effective implementation of international legal frameworks governing TOC, having monitoring body is vital to evaluate the measures taken and the progress made by State parties. For example, the CoP to the UNTOC is established to monitor and review the implementation of the Convention via acquiring the necessary knowledge of the measures taken and the difficulties encountered by the State Parties.²⁶¹ In the IGAD governance, monitoring mechanism has not yet been introduced to review and monitor the measures taken and the progresses made by the Member States for preventing TOC rather, the existing institution is inherently entrusted with the responsibility of providing capacity building assistance to the Member States. This designates that the institutional frameworks of IGAD including the TOC and SICB Pillars have nothing to do with the monitoring function. Tu'emay also asserted that, "comparatively, ECOWAS has an operational branch that deals with disruption and prevention, but IGAD is working more

²⁶⁰ Ibid.

²⁶¹ The UNTOC (2000), Cited above at note 8, Article 32(4)

exclusively on capacity building.”²⁶² Hence, lack of monitoring mechanism is another challenge that prevents IGAD from combating TOC more resiliently.

4.4.5 The Absence of Universal Adherence towards the Global and Regional Legal Frameworks Governing TOC

Becoming party to the most authoritative multilateral Convention governing TOC is important to counter TOC. For instance, the UNTOC has been ratified by Ethiopia, Sudan and Uganda and acceded by Djibouti, Eritrea and Kenya except South Sudan and Somalia. The Trafficking in Persons Protocol has been ratified by Ethiopia and acceded by all Member States of IGAD except Somali and South Sudan. The Smuggling of Migrants Protocol has been ratified Ethiopia²⁶³ and acceded by Kenya, Djibouti and Uganda. The Firearms Protocol has been ratified Ethiopia²⁶⁴ and acceded by Kenya and Uganda. Here in the afore-said laws, even though Ethiopia, Kenya, Uganda and Djibouti are in a good progress of adherence, a problem of ratification is still there especially from Somalia, South Sudan, Eritrea and Sudan. Concerning the IGAD Convention on MLA and Extradition, they have exclusively been ratified by Djibouti and Ethiopia and the remaining Member States are failed to adhere or to ratify even though they are urged and encouraged by the ISSP. The effective implementation of the global and the IGAD legal frameworks pertaining to TOC have thus been restricted and permeated by the absence of ratification from the Member States of IGAD and this can proliferates the vulnerability of the region for TOC.

4.4.6 Lack of the Exchange of Information’s and Sharing of Criminal Intelligence System

The exchange of information’s and sharing of criminal intelligence system is an enforcement mechanism introduced in international legal instruments to dismantle TOC. In this respect, Ollo Alian Pale, Head at the ECOWAS Peace Support Division stressed that “*criminal intelligence and information sharing is the key to the effective fight against*

²⁶² Ibid.

²⁶³ Cited above at note 192

²⁶⁴ Ibid.

transnational organized networks and activities.”²⁶⁵ Comparatively, the practice of ECOWAS proves that, it enacted a Protocol for the Establishment of a Criminal Intelligence and Investigation Bureau (CIIB) in 2005.²⁶⁶ Further, ECOWAS established a West African Police Chiefs (WAPIS) to increase the capacity of West African law enforcement authorities to combat TOC through the exchange of information and sharing of criminal intelligence system.²⁶⁷ Likewise, SADC through the Southern Africa Regional Police Chief Cooperation Organization (SARPCCO) established an operational mechanism or police chief forums to prepare and disseminate relevant information on TOC activities.²⁶⁸ When we come to IGAD, Tu’emay vowed that, “there are no mechanisms even practices on the exchange of information and sharing of the criminal intelligence in the region. Because of this drawback, IGAD has no the capacity or opportunity to know, analyze and to take actions. The only simple undertaking made by IGAD was an assessment conducted in some period of intervals just to know the dynamics of what is existing, evolving and emerging, the scale and magnitude, to know what are the specific typologies and modus of operandi happening for each criminal activities. Moreover, he said, IGAD wants to have this mechanism and in fact, “since 2014, there is an agreement between IGAD and the Member States to establish a kind of regional exchange of information and sharing of the criminal intelligence unit that routinely undertakes information gathering, intelligence analysis and informs Member States to take actions against TOC. However, practically, it is not yet achieved and still very weak because of the level of the interest and readiness of Member States to cooperate.”²⁶⁹ Fortunately, Kenya is officially adopted the exchange of information and sharing of criminal intelligence system governing TOC and this can be a lesson for the IGAD and other member states too. Thus, even if IGAD is highly engaged in encouraging its states to adopt the system, still it does not have any exchange of information and sharing of criminal intelligence system and this impedes IGAD from reacting against the adverse impacts of TOC.

²⁶⁵ <http://www.ecowas.int/west-african-police-chiefs-committee-meet-on-trans-border-crime-collaboration/> Accessed on December 13, 2018

²⁶⁶ Ibid.

²⁶⁷ <https://ec.europa.eu/europeaid/node/108387el> Accessed on December 13, 2018

²⁶⁸ UNODC & INTERPOL, “Digest of Organized Crime Cases: A Compilation of Cases with Commentaries and Lessons Learned, (The UN Publication, October 2012), p.67

²⁶⁹ Interview with Tuemay Aregawi, Cited above at note 103

4.4.7 Dependency on Foreign Financiers and limited financial capacity

The efforts to fight TOC needs huge finances, “due to the reason that TOC is not a stagnant type of crime; it continuously changes and evolves to keep pace with society and the ever-changing world and continued interactions between states.”²⁷⁰ Perceptibly, IGAD is facing financial constraints to thwart TOC as if it is one of the most underdeveloped and economically devastating region in the world. As Alex De Waal rightly identified that, “*the problems of building a robust peace and security architecture in the Horn of Africa is just because of dependency on foreign financiers especially the US and EU.*”²⁷¹ This shows how the financial sources of the horn indirectly the IGAD region is vehemently reliant on the will of the global north countries. Tu’emay also reaffirmed that “IGAD is hugely been donor-dependent and donors will not assist IGAD to establish its own institutions, instead they normally support on ad hoc or separate activities that are alien to or with their own priority.”²⁷² Here, it implies that the global north countries have no intention to provide financial assistance to IGAD on a permanent basis to fight TOC, and shows how IGAD is failed to defray the total cost of its activities on the fight against TOC. Indeed, the problem of underfunding is inevitable not only in the IGAD region but also in the ECOWAS region. “Underfunding or financial constraint is also continued to derail the progress and effectiveness of the ECOWAS initiatives against drug crime.”²⁷³ Therefore, financial constraints or high reliance on donor funding besets the roles of IGAD for addressing TOC.

4.4.8 Overlapping or Multiple Memberships

Indeed, almost all RECs have the problems of overlapping memberships.²⁷⁴ All IGAD Member States are parties of at least one other Africa REC’s.²⁷⁵ As evidence, Kenya and

²⁷⁰ Answering the Challenge of Transnational Organized Crime, p.3

²⁷¹ A. de Waal, The Future of Ethiopia: Developmental State or Political Marketplace, World Peace Foundation., (August 20, 2018)

²⁷² Interview with Tuemay Aregawi, Cited above at note 103

²⁷³ B. Miangwa, Assessing the Responses of The Economic Community of West African States to the Recurring and Emerging Security Threats in West Africa, Journal of Asian and African Studies., Vol.52 (1), (Sage, 2017) p.111

²⁷⁴ Solomon Gebreyohannes, cited above at note 21, p.28

²⁷⁵ B. Byiers, the Political Economy of Regional Integration in Africa: IGAD, (January 2016), p.19 available at <http://ecdpm.org/peria/igad>>accessed on 14 December 2018

Uganda are members of the EAC,²⁷⁶ which South Sudan and Somalia have applied to join.²⁷⁷ All Member States except Ethiopia, Somalia and South Sudan are parties to the COMESA.²⁷⁸ Sudan, Djibouti, Eritrea, Somalia and Kenya have joined the Community of Sahel-Saharan States.²⁷⁹ Djibouti, Sudan and Somalia are also members of the Arab League and further, Sudan, South Sudan, Uganda and Kenya are members of the International Conference on the Great Lakes Region (ICGLR).²⁸⁰ The problem with multiple memberships may limit the roles of the Member States to engage fully in the IGAD agenda.²⁸¹ Girmachew rightly stated, *“the overlapping Membership of States in the various sub-regional communities weakens the ability of states in sub-regions to pull together their resources in building up relevant security institutions, and it causes potentially conflicting political commitment of states to opposing objectives of the various sub-regional organizations. Moreover, [It] can also be used by states to evade the responsibility to address specific security problems by claiming that responsibility lies with one or another sub-regional organization.”*²⁸² This indicates that overlapping membership may weaken the capability of states in the REC’s, triggers a conflict of interest among/between the various objectives of RECs and opens a room for states to evade their responsibility by the mere fact that the duty lies with one or another REC’s. Tu’emay also stated, “Member States of IGAD preferred to operate individually rather than through multilateral platforms. For example, Kenya and Uganda strongly seem to give priority to the EAC, leaving Ethiopia to pursue its own interests in IGAD.”²⁸³ From this we can realize that multiple memberships is another restriction that ostensibly lowering the roles of IGAD in the fight against TOC.

²⁷⁶ W. Prichard, “The Role of IGAD in Shaping Livestock Policy in the Horn of Africa: Understanding the International System, International Actors and Implications for Reform (Institute of Development studies, Sussex), IGAD LPI Working Paper no.12-08, p.9

²⁷⁷ B. Byiers, cited above at note 275, p.19

²⁷⁸ Ibid.

²⁷⁹ Solomon Gebreyohannes, cited above at note 21, p.28

²⁸⁰ B. Byiers, cited above at note 275, p.19

²⁸¹ Ibid.

²⁸² Girmachew Alemu Aneme, A Study of the African Union’s Right of Intervention against Genocide, Crimes against Humanity and War Crimes, (2008, Unpublished PhD Diss., University of Oslo), p.151

²⁸³ Interview with Tuemay Aregawi, Cited above at note 103

CHAPTER-FOUR

Conclusion and Recommendations

5.1 Conclusion

This study has addressed the roles of IGAD in addressing TOC's by examining the legal and institutional frameworks of IGAD governing TOC, the practical roles/achievements of IGAD and the Member States towards the threats of TOC. Finally, the recurring challenges associated with the deeds of IGAD against TOC have been explored. Thus, this study came up with the following conclusion/findings.

To address the scourges of TOC, IGAD has exerted its efforts by enacting various legal frameworks i.e. the Khartoum Declaration on Combating Terrorism and TOC, the IGAD Peace and Security Strategy focusing on TST's, the IGAD Convention on MLA and Extradition, the MoU on Cooperation in the area of Peace and Security between the AU and REC's and the IRMPF. However, these laws have been remained as initiatives due to the reason that they are not specific and comprehensive to focus on TOC and to be binding on the Member States. Therefore, IGAD has no laws specifically addressing TOC.

IGAD has institutional frameworks, which specifically emphasize on TOC i.e. ISSP, TOC pillar, and the Maritime Security Pillar, SICB, IRMCC, and CEWARN. The ISSP is designed to address TST's, which embraces TOC. The TOC pillar owns an exclusive function of combating all forms of TOC, which are prevalent in the IGAD region. The Maritime Security Pillar is exclusively entrusted to combat one form of TOC i.e. maritime piracy. The SICB conferred with a power to provide capacity building assistance to IGAD and the Member States to fight TOC. The IRMCC is designed to combat one form of TOC i.e. smuggling of migrants. The CEWARN is indirectly entrusted to deter cattle rustlings and trafficking of SAWL. However, these institutional frameworks are ineffective and toothless since they are inherently limited to providing capacity-building assistance.

Some enforcement mechanisms have been introduced by IGAD to stem crimes such as MLA, extradition and capacity building assistances. However, these mechanisms are not

effective and binding to counter TOC due to the absence of ratification from all Member States except Djibouti and Ethiopia. Importantly, it does not have key enforcement mechanisms such as monitoring mechanism, border control measures, joint investigation arrangements, the exchange of information and sharing of the criminal intelligence system, the seizure and confiscation of criminal proceeds and witness and victims protections mechanisms except capacity building functions.

Member States are striving to fight TOC in the region by itemizing TOC as a real threat and by taking of various strides including legal and institutional measures. Comparatively, Kenya has a specific legal regime governing TOC and listed categories of TOC, adopted exchange of information and sharing of criminal intelligence, while others do not have such specific laws on TOC. Instead, the majority of Member States of IGAD have issued laws exclusively focusing on some forms of TOC such as human trafficking, smuggling of migrants, and illegal cash flows. The roles of Somalia, South Sudan, Eritrea and Djibouti for combating TOC in the IGAD region are very trivial in comparison with Kenya, Ethiopia and Uganda.

The major achievements of IGAD for combating TOC are the articulation of the threats of TOC, encouraging Member States to adhere with the existing international and regional legal instruments including IGAD's frameworks and provision of capacity building assistance to the Member States. Further, it encourages Member states to adopt the exchange of information and the sharing of criminal intelligence system and inspires them to fight TOC through cooperation.

IGAD has facing various restrictions that hamper its endeavors against TOC: the absence of comprehensive regional legal framework on TOC, lack of common understanding on what qualifies TOC, lack of monitoring body, the absence of universal adherence towards the global and regional legal frameworks governing TOC and lack of the exchange of information and sharing of criminal intelligence. Moreover, the conflict prone nature of the region and dependency on foreign financiers and limited financial capacity are also other restrictions.

Thus, the roles of IGAD in addressing TOC's are very insignificant, and this ought to agitate IGAD and the Member States further to work on it more ever than today.

5.2 Recommendations

Based on the above findings, I suggested the following recommendations that should be given due consideration by IGAD and the Member States to strengthen its operational capability to address TOC.

- IGAD should enact wide-ranging and legally binding legal frameworks, which would specifically be emphasized on the adverse impacts of TOC.
- IGAD should establish institutional frameworks that would comprehensively embraces a robust enforcement mechanisms such as exchange of information and sharing of criminal intelligence system, monitoring and reviewing mechanisms, periodic peer review system, border control measures, joint investigation arrangements, the seizure and confiscation of criminal proceeds, and victims and witness protections measures, besides capacity building assistance, MLA and extradition.
- Member States that have not yet ratified the IGAD's legal frameworks including the MLA and the Extradition Convention and other international legal instruments including the UNTOC and its supplementary Protocols should ratify, observe and harmonize them into their domestic laws. In addition, they should establish cohesive national legislative and institutional frameworks, and amend their national legislation, where necessary, in order to address all forms of TOC.
- IGAD should reduce the conflict-prone nature of the region, which proliferates the natal of TOC by strengthening its conflict prevention, management and resolution mechanisms in the region, and to the end, IGAD should maximize its finical capacity by creating its own internal sources of income and finding alternative sources of funding for a permanent basis.

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ANNEX

- Interview with Tu'emay Aregawi Desta, Head of Transnational Organized Crime Pillar at the IGAD Security Sector Program (ISSP), October 9, 2018

Interview Questions

- 1) Are there any transnational security threats in the IGAD region? If it so, which categories of transitional organized crime are prevalent in the region?
- 2) Does IGAD has its own legal frameworks to address the existing security threats in the region i.e. Transnational Organized Crime? If it is so, what are they? If not, why for?
- 3) Does IGAD own its own institutional frameworks to address the existing security threats in the region i.e. Transnational Organized Crime? If there is an institution, which institution has been mandated to disrupt transnational organized crime from the region? If not, why for?
- 4) What are the roles of IGAD in addressing transnational organized crimes?
- 5) What possible measures have been taking by IGAD in addressing transitional organized crime, which have been inevitable in the region? What roles have been played by it to counter and prevent transnational organized crime from the region?
- 7) What seems like the commitments of IGAD member states in supporting the countering efforts of IGAD against transnational organized crime?
- 8) What are the challenges and triumphs of IGAD in addressing transnational Organized Crime? What possible measures have been taking to avert the challenges and to maintain the success registered by IGAD against Transitional Organized Crimes?