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Foreword

We have received the news of the revival of the *East African Law Journal* with a lot of excitement. This is a welcome development in the legal and academic circles in the East African region. This journal traces its life history back to the days of the defunct East African Community, which was established in 1967 and collapsed ten years later in 1977. It is recalled that the journal whose last publication was in 1977 was a joint publication of the Community and the Faculty of Law, University of Nairobi. Like many other activities, which were conducted under the auspices of the Community, publication of the journal was also affected by the collapse of the Community and could not continue after its demise. Absence of such journals is untenable as it not only denied scholars a forum for their scholarly works and dissemination of research findings but also contributed to lowering the standards of legal practice and teaching in the region. It is in this context that the revival of the *East African Law Journal* is a welcome development, which will *inter alia*, alleviate those problems.

The collapse of the East African Community was widely regretted in the region and the people of East Africa upon realising that it was a grave mistake to let the Community break have taken deliberate steps to revive it together with its institutions determined that "it should never happen again." Revival of the *East African Law Journal* is a step towards that goal and indeed a clear testimony of determination of the East Africans towards solid regional integration.

The importance of co-operation in different areas among the East Africans cannot be over emphasised. The Treaty for the Establishment of the East African Community states clearly in Article 5 that the "objectives of the Community shall be to develop policies and programmes aimed at widening and deepening co-operation among the partner States in political, economic, social and cultural fields, research and technology, defence, security, legal and judicial affairs, for their mutual benefit." The Treaty also puts emphasis on the involvement of private sector/civil society in the integration process. The work and contribution of the academic institutions in the integration process is of vital importance in order to avoid pit falls which lead to the collapse of the previous Community, which is a fact also, recognised by Treaty.

Undoubtedly the reintroduction of this journal plays a significant role in

F. X. Njenga, International Law and World Order Problems, Moi University Press, Eldoret, 1998

Review by Ongoya Z. E.*

Professor F. X. Njenga is not new in the International Law arena. The capacities he has served in include; a legal advisor in the Ministry of Foreign Affairs of the Republic of Kenya for 10 years; the Kenyan representative at the U.N. Conference on the Law of the Sea that culminated into the 1982 Law of the Sea Convention where he is reputed to have been the brain behind the Exclusive Economic Zones concept; and Dean, Faculty of Law, Moi University in Kenya. Indeed, it does not invite extra lobbying to conclude that he is beyond-averagely versed with issues of International Law and contemporary world order problems.

The creeping of his book from the printing press could not have achieved a better timing, more particularly in an era when publishing in Kenya and specifically on International Law related issues boasts of retaining the lowest ebb.

As a book written in the form and style of a general outline of an introductory text intended primarily for law students taking their preambular lessons on this branch of the law, *International Law and World Order Problems* assumes the familiar sequential flow of similar treatises both in its choice and arrangement of topics or subject areas. The book also adopts a voluminous inclusion of annexes and indices. These annexes, which entail important instruments and the House of Lords decision in the *Pinochet case,* definitely form useful references for the reader, as these documents are not easy to come by.

That having been said, the reviewer now proposes to take an odyssey of a near surgical diagnosis of the chapter breakdown of the book. The first three chapters will be accorded some lengthy consideration.

The first chapter takes a cursory look at the nature of International law commencing from the ever-challenging definitional standpoint. The traditional school of thought that restricted International Law to the relationship between states is juxtaposed and contrad-istinguished from the present day position where other entities are recognized as falling within the ambit of concerns of International law.

The jurisprudential question "Is international Law really Law?" is posed in this chapter and the author attempts a four-ground justification for International Law being law.

The abstinence of the author from discussing this question from a philosophical pedestal of making reference to the various theoretical schools of thinkers that underlie the origins of the question has a veritable potential of leaving a newcomer into the realms of International Law not appreciating the essence of the polemics.

The origins of International Law are also discussed in this chapter where the contribution of the Greek City states, the Egyptian pharaonic era, the Roman Empire and the peace of Westphalia are mentioned in passing. It would have been advisable for the author to lay greater emphasis on the specific aspects of International Law that trace their ancestry to these ancestral kingdoms and also to give greater detail of the circumstances informing the peace of Westphalia in order to give an upcoming scholar a far much sound foundation on the origins of this branch of learning.

The Second chapter is dedicated to the sources of International Law. The focus of this chapter is riveted to Article 38of the statute of the International Court of Justice, which according to the author "was copied verbatim from the statute of its (the I.C.J's) predecessor, the Permanent Court of International Justice.

Under this chapter, the author plunges into the controversy of the hierarchy of the sources of International Law and expresses his "better view" by giving precedence to treaty law followed by custom the general principles of as recognized by civilized nations before concluding with judicial decisions and works of publicists as subsidiary sources of International Law. In so granting treaties a position at the apex, the author is silent on the position of treaties *vis-à-vis* customary norms of *Jus Cogens* in the glowing light of the provisions of Article 53 of the Vienna Convention o the Law of Treaties.

Having discussed the sources of International Law under Article 38 of the I.C.J. statute, the author takes a glance at "Other possible sources International Law." Here, a justification is attempted at the argument that the United Nations General Assembly Resolutions "Cannot be discounted as sources of International Law as they represent genuine consensus on important International Law issues."

This position is a little too controversial in view of the opinion expressed by a plethora of authors that such resolutions, much as they may be evidence of *opinio juris sive necessitatis,* a constituent element of customary International law, they are not in themselves sources of International Law.

The learned author further opines that the I.L.C., as established under Article 13(a) of the United Nations Charter is a "source of International Law – by "source" meaning where one may find the substantive content of International Law.

The reviewer considers this to be a little confusing to a neophyte at International Law for whom the text is intended since much as the I.L.C draft articles/draft Con-

ventions may be codifications of Customary International Law, the I.L.C. itself may not *stricto sensu* be a source of International Law within the meaning of "sources of International Law" acknowledged by the author at the beginning of the chapter.

In the third chapter, the author considers the evolutionary subject of international personality. It is in this chapter that the student of international law is treated to the primacy of states as subjects of International Law. The author also makes reference to other entities that seem to have attained the status of international legal persons in different respects such as International Organizations, Individuals, National Liberation Movements and the Holy Sea.

The controversy as to whether individuals are subjects or objects of International Law is left undiscussed. Likewise, no emphasis is given to what constitutes a National Liberation Movement. The positions of belligerents, condominia and states within a federal Republic are not mentioned at all.

The other subjects dealt with by the author in the subsequent chapters are: Recognition of states and Governments, State Responsibility, Immunity from Jurisdiction, Extra Territorial Jurisdiction, The Law of the Seas, Human Rights and the Law of Treaties.

Legal subjects which are not mentioned at all but which would have been resourceful for a student of International Law are; the interplay between International Law and Municipal law, the concept of territory in International Law, aspects of Space Law, International Environmental Law, State Succession, and Settlement of Disputes in International Law.

A book that is dedicated to world Order Problems may also require coverage of the position and relevance of the United Nations and other international institutions/organizations in the contemporary world order. Such other contemporary problems like terrorism also cry for recognition in a book that is dedicated to, *inter alia,* world order problems.

Judged within the intellectual and economic milieu in which professor F.X. Njenga has had to work, the book stands out as a superb accomplishment and on that basis, the reviewer has no significant adverse criticism.

However, to quench the thirst of his enthusiastic readers, Prof. Njenga should come up with a sequel sooner than later to fill the few warps that have manifested themselves in his first edition.

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* Bar candidate, Mohammed and Muigai Advocates.The position taken by the reviewer is entirely his own and does not reflect the ideological inclination of the firm to which he is attached or the institutions attended.