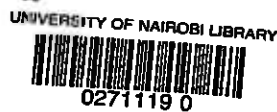


**REGIONAL CO-OPERATION AND INTEGRATION IN EAST
AFRICA: THE CASE OF THE EAST AFRICAN CO-OPERATION,
1993-1999**

By: Morara Henry Ongwenyi

**This dissertation is submitted in partial fulfilment of the Degree of
Master of Arts in International Studies, at the Institute of Diplomacy and
International Studies (IDIS), University of Nairobi.**



October 2001

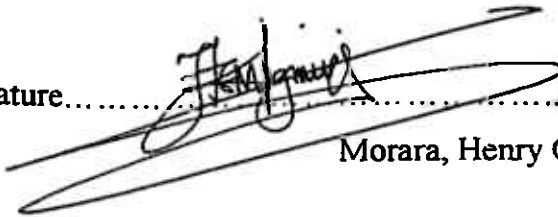
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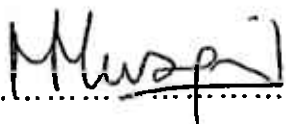
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Declaration

This dissertation is my original work and has not been presented for the award of a degree in any other university.

Signature.....  Date. 10/27/2001
Morara, Henry Ongwenyi.

This dissertation has been submitted for examination with my approval as a University Supervisor.

Signature.....  Date. 4 November 2001
Makumi Mwagiru, Ph.D. *from where? kuba!*

UNIVERSITY OF KENYA

TO OUR DAUGHTER KEREBI CHIRI

- I now come home having completed the leg of the journey that you consigned me to. If I do not ultimately proceed to the finishing ramp, I rest in the knowledge that you will do that for me.

Acknowledgements

I now move to thank all those who in one way or another have been an unswerving source of inspiration and support to me throughout this study. Yet this is not the place to enumerate them all and their individual contributions. Therefore in acknowledging one, I also acknowledge all others who I am unable to mention here by name.

At the University of Nairobi during this second home – coming, I have immensely benefited from the wise counsel of my teachers. I am particularly indebted to Dr. Makumi Mwagiru who exercised extreme patience to read through the bulk of this study as my supervisor. He is the most understanding, critical, thorough and brilliant scholar that I have ever met. The Director Institute of Diplomacy and International Studies, Prof. J. D. Olewe Nyunya was always handy with his fatherly advice. Mr. Gerishon Ikiara and Dr. Cirino Hiteng gave me very useful insights in their various areas of specialisation. This work is the richer with their invaluable input, but I hasten to take full responsibility for all the views expressed herein. My gratitude to you all is beyond measure.

I also received assistance from the East African Community Secretariat at Arusha Tanzania on the course of my research. Ambassador Francis Muthaura, the former Executive Secretary, allowed me to pick his minds at short notice. Dr. Magaga Alot provided me with most of the information and official documents that I required. The staff of the Secretariat Library was most helpful and friendly. My friends Ojwang', Ochuku, and Jared kept the fire burning when I was on the verge of despair. I salute you all.

As in any other Third World country, the quest for knowledge in Kenya is an expensive undertaking. I now turn to those who made serious financial sacrifices to see me through this programme. My uncle Enock had to sell a cow – I owe him such a heavy debt that I honestly do not know how I will ever repay it! Uncles Henry and Richard always gave me a shoulder to lean on when the raging clouds could turn pitch dark threatening to make night of day. The gods of providence visited me when the University of Nairobi awarded me a scholarship. On the home stretch, IFRA-Nairobi chipped in with humble funding for my research. To you all thank you and thank you.

But it is to the family that tired and battle-weary soldiers return to repose after a long winters night. My wife Betty has been a constant source of support and warmth to me, more than I had reason to expect. She, with great grace and humility, adjusted to a home with an

absentee husband away in far-away lands in search of an education – thank you, you are a most wonderful lady! My mother Callen, who at my age has never relinquished the thought of me as her child, is one Kenyan who has made immeasurable sacrifices over the years to get me to where I am. She has been a true source of inspiration and encouragement to me that no feat is insurmountable even with feeble hands so long as the will is there. Thank you Mum.

A very special thing happened to Betty and I on the October 24th 1998, just three days before I formally embarked on this latest sojourn. Our daughter Kerebi Chiri voted not to be away in the market too long and dropped by to flag me off. For good or for worse, she has remained the epitome of happiness in our family and a constant reminder that it is for the joys and better times of this future generation that we must labour without cease. It is to her that I have dedicated this work.

Morara Henry Ongwenyi

University of Nairobi

October 2001.

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CHAPTER ONE

BACKGROUND OF EAST AFRICAN CO-OPERATION

1.1 Introduction

At the close of the twentieth century, the African continent inevitably finds itself caught in the clutches of time. Globalisation has taken a feverish pitch, the industrial revolution is long covered in the debris of history, and the information age is here with us. But all these momentous events in the history of human development seem to have passed Africa by. The end of the Cold War era has shown that Africa is increasingly finding itself isolated. Indeed, even the donor funds that it needs to develop and which were plenty during the Cold War must now be justified by the implementation of conditionalities and the Structural Adjustment Programmes (SAPs). This demonstrates that any hope that Africa would some day emerge from the doldrums to take its rightful place among other international actors will forever remain a mirage if Africans themselves do not take stock of the past and discern where things began to go wrong - "where the rain began to beat us." That the rains beat us is not in contention and Africa must now rise up and use every opportunity and resources available to find proactive solutions that will ameliorate the lot of its peoples. The bottom line is that solutions for Africa's problems must come from Africa itself.

Just as once Africa embraced the future - and then it lost it - it needs now to reclaim the future for its own.¹ The popular image of Africa in the eyes of the international community is of a continent replete with all sorts of man-made and natural calamities. These include intransigent famines and genocidal wars that cannot just go away. These have left in their wake serious disruptions of lives, violations of human rights and other problems of monumental proportions that cannot be wished away. Proper prescriptions for the political and economic malaise must be found if the wholesale suffering of the peoples of Africa is to be stopped.

¹ Makumi Mwangi. Reclaiming the Future: Pan-Africanism, the OAU, and Foreign Policy in Africa. USIU-A Occasional Papers on International Relations No. 1 (1999), p. 1-2.

The search for such a new identity must necessarily go back to the spirit of Pan - Africanism, which remains the bedrock upon which any progressive developments in Africa will be built. Pan-Africanism as a principle and a movement dreamt of a united Africa that would pool together its resources for the betterment of its peoples. Though there were differences in approach to the question of African post-independence development, it was realised that a strategy that can see Africa grow into greater prosperity had to begin with African unity. Such an arrangement, Kwame Nkrumah argued, would operate on the lines of federalism with central planning, guided by common foreign and defence policies:

If we in Africa set up a common economic planning and organisation and a joint military command, it follows that we shall have to adopt a common foreign policy to give direction to our national continental defence and our national continental economic and industrial planning².

There were two schools within the Pan - Africanist movement – the Casablanca Group and the Monrovia group. The Casablanca Group, which was also called the 'Instant Unity School', advocated immediate political unification, involving the surrender of sovereignty to a new central authority, which would function within a federalist framework.³ The proponents of this school included Presidents Kwame Nkrumah of Ghana, Sekou Toure of Guinea and Modibo Keita of Mali. On the other hand the Monrovia Group, which has also been referred to as the 'Gradualist School', favoured incremental co-operation in specific sectors, leading in some distant future, to a transfer of sovereignty to a central authority.⁴ The vast majority of the new independent African leaders supported the building block or step-by-step approach propounded by the Monrovia Group. Indeed one of the greatest proponents of this school, Mwalimu Julius Nyerere, believed that while continental unity was politically desirable, it was not practically implementable at once.

² Kwame Nkrumah, London: Panaf., 1974, p. 117.

³ Jeggan C. Senghor. "Theoretical Foundations for Regional Integration in Africa: An Overview," in P. Anyang Nyong'o (ed.), Regional Integration in Africa: Unfinished Agenda, Nairobi: Academy Science Publishers, 1990, pp. 17-31, p.17.

⁴ *Ibid.*

The failure of political union test cases like the Ghana – Guinea – Mali Union, the association of the Casablanca School with radical socialist (communist) ideology, pressures for consolidation of national political independence and the novelty of the taste of power on the part of the emerging political elites ensured that the Gradualist School prevailed. Consequently the gradual functionalist approach was adopted as the continental strategy for post – independence African development. For this purpose Africa was divided into five regions; Northern, Southern, Western, Eastern, and Central Africa. The rationale was that the countries in these respective regions would engage in incremental co-operation, in the process establishing some form of satellite regional ‘governments’. When this would have been achieved, then the regional ‘governments’ so formed would join together to form a federal United States of Africa.

This study seeks to investigate how far this strategy has worked in the East African region. It is observed that the current efforts at regional co-operation and integration amongst the three East African countries of Kenya, Uganda, and Tanzania is somewhat a case of old wine in new wine baskets. This is because the history of East Africa is replete with failed attempts at regional unity. For instance, in 1967 the three countries signed the Treaty for the East African Co-operation, which established the East African Community. The Community served to provide the necessary infrastructure to support economic co-operation and investment in common services. The lack of strong political will and the absence of a common foreign policy to guide the co-operative process, in the words of Kwame Nkrumah, resulted in the eventual collapse of the Community in 1977. Since then the sterility of East African foreign policies, just like in the rest of Africa, has ensured stagnation in the progress towards African unity:

African foreign policies are in need of redemption as the millennium comes to an end. Contemporary African foreign policies are in a crisis because after decades of purporting to speak for Africa, the dominant image remains one of diplomatic soldering. This image underlies precisely the problem - and crisis - of African foreign policies: they are about competitions rather than co-operations. Worse still, they are about competitions between African states themselves, about diplomatic fights and their hollow victories. The problem is that as African foreign policies and diplomacies remove the gloves against each other, and shadow box with their own shadows, Africa continues to receive

deadly knockout punches elsewhere in the unforgiving world of international politics.⁵

This notwithstanding, in November 1999, the three East African countries signed the Treaty for the Establishment of the East African Community (EAC). Effectively this completed the process towards the re-establishment of the East African Community that broke-up in 1977. This process had started with the establishment of the Permanent Tripartite Commission for East African Co-operation in 1993 and the Secretariat of the Permanent Tripartite Commission in 1994. The study therefore seeks to analyse the activities of the three member states, and the issues that animated debate from 1993 through the years to the eventual signing of the Treaty in 1999. To inform this process, experiences will be borrowed from other regional co-operation arrangements so that mistakes of the past do not remain the obstacles of the present only to become the lost opportunities of the future.⁶ With respect to this experiences would be borrowed and comparisons made with the ECOWAS and EU. A keen eye will be trained at the areas of institution building, the sharing of resources accruing from co-operation, and lastly, the process of decision-making. These remain relevant areas of concern to the institutionalisation of the East African co-operation.

1.2 The Problem Statement

As has been pointed out elsewhere, the quest for regional unity in East Africa is not a new phenomenon. The dissolution of the old East African Community (EAC) in 1977 represents a major watershed in the history of co-operation in East Africa. The former Community's collapse was precipitated by various factor among them: lack of strong political will among the partner states; lack of strong participation of the private sector and civil society in the co-operative activities; the continued disproportionate sharing of the benefits of the Community among the Partner States due to their differences in levels of development; and lack of adequate policies to address this

⁵ Makumi Mwagiru. *Reclaiming the Future: Pan-Africanism, the OAU, and Foreign Policy in Africa*. USIU-A Occasional Papers on International Relations op. cit. P.3

⁶ See, for example, Altaf Gauhar (ed.), "Introduction". *Regional Integration: The Latin American Experience*. London: Third World Foundation, 1985.

situation. The break-up also happened in the background of serious political rivalries and suspicions among the three Heads of State, which culminated in Tanzania's invasion of Uganda that culminated in the overthrow of the government of President Idi Amin in 1979.

Yet the desire to derive benefits from unity for the good of the peoples of East Africa has never died completely. The concept of unity has remained a central theme in African political discourse. Even within nation states, the concept of unity has remained central to developmental concerns, with national leaders preaching the virtues of unity if development is to be assured. This belief in strength derived from unity saw the three East African states make commitment to explore prospects for future co-operation after the collapse of the former Community. Indeed Article 14.02 of the 1984 Mediation Agreement embodied a commitment by the Republic of Kenya, the Republic of Uganda and the United Republic of Tanzania to explore and identify areas for future co-operation and make the necessary institutional arrangements to make good such co-operation.

Concrete steps towards the fulfilment of the spirit of this Article began on November 30th 1993 when the Permanent Tripartite Commission for Co-operation between the Republic of Kenya, the Republic of Uganda and the United Republic of Tanzania was established. The Permanent Tripartite Commission was to take charge of the co-ordination of economic, social, cultural, security and political issues among the three countries. Further, the Heads of State of the three countries made declaration for closer East African co-operation. The establishment of the Secretariat a year later, on the 26th November 1994, through Provision of the Protocol on the Establishment of a Secretariat of the Permanent Tripartite Commission, brought the long nursed dream for eventual East African unity closer to reality.

To fully re-establish the East African Community, the Agreement establishing the Permanent Tripartite Commission had to be renegotiated and upgraded to a treaty. This took a treacherous path beginning with a Draft Treaty, which was exposed, to

⁷ See Preamble to the Draft Treaty for Establishment of the East African Community. EAC Secretariat, Arusha, 1998. See also Olatunde Ojo, "Regional Co-operation and Integration", in Ojo *et al.*, African International Relations. London: Longman, 1985. p.142-181.

wide debate on a regional basis to give the people of East Africa an opportunity to contribute to the treaty making process. For this purpose several workshops were held and recommendations from their deliberations forwarded to the Secretariat to be worked into proposals to be included in the final treaty⁸. During these debates it was apparent that a number of issues were not easily susceptible to agreement by the three states. Among some of the proposals in the Draft Treaty that could not be easily agreed upon were those in respect to zero tariff trade, the right of establishment within the proposed community, and laws and regulations relating to labour and capital movement.

Disagreements over these issues came to bog down the process of community formation, as the treaty could not be signed in scheduled time. The fact was that Uganda and Tanzania still resented the spectre of establishing a regional arrangement that will unduly favour Kenya akin to the defunct EAC. For this reason they were not willing to leave anything to chance and they demanded that certain safeguard measures be built into the treaty to protect their infantile industries, and to ensure that the benefits accruing from the community are equitably shared. Matters of economic governance especially with respect to rampant corruption that had come to be associated with Kenya also presented a sore point. The debate that eventually resulted from this was whether the three states should sign a treaty which would have been more less a declaration of intention to form a community or wait until all the contentious issues were all agreed upon and then sign an all inclusive treaty.

Uganda and Tanzania favoured a step-by -step approach that would have seen the states sign a 'shell' treaty and continue to negotiate the contentious issues and sign separate protocols on reaching common positions. On the other hand Kenya favoured a delay of the treaty signing until such a time that most of the contentious issues were agreed upon. The effect of these divergences was that the treaty, which had been scheduled to be signed on July 30th 1999, could not be signed. These issues had proved intractable that even the Treaty for the Establishment of the East African

⁸ See for example Report of the Workshop on the Draft East African Community Treaty, held at the Kenya School of Monetary Studies, 24-25 September 1998, Nairobi, Ministry of East African and Regional Co-operation.

Community that was eventually signed four months later on November 30th 1999 actually excluded most of these issues, as agreement could not be reached. They were left out for further negotiations. It would appear that the position taken by Tanzania and Uganda won the day. It is also clear that the problems frustrating progress in East African co-operation are similar to those that led to the collapse of the former East African Community.

The study seeks to find out how the current East African co-operation proposes to resolve these entrenched problems so as to assure progress in the region. It will further investigate how the prevalent political will and the uncoordinated foreign policies of the three East African countries impact on the growth of East African co-operation. Finally the efficacy and suitability of the institutional structures put forward by the Treaty to deepen co-operation will be assessed.

1.3 Objectives of the Study

(a) Overall Objective

To investigate the process towards the establishment of the East African Community.

(b) Specific Objectives.

- i) To establish the nature of institutional arrangements and decision-making structures that will be compatible with the objectives and aspirations of East African co-operation.
- ii) To establish the role of a harmonised and co-ordinated East African foreign policy in furthering the goals of regional co-operation and integration.
- iii) To make recommendations on possible policy approaches that will ensure the success of the East African Community.

1.4 Justifications of the Study

There is a dual justification for undertaking study on regional co-operation and integration in East Africa. These are academic and policy justifications.

(a) Academic justification

Regional co-operation and integration is an important emerging area in international political discourse. Very many efforts of this kind have been made the world over with the European Union (EU) being seen as the most successful of them all. It is hoped that the study of East African co-operation will create and enrich the available body of literature on regional co-operation and integration.

(b) Policy Justification.

The study aims to use its findings to offer recommendations on possible policy initiatives that may be useful to the growth of East African co-operation. It is hoped that the findings will significantly inform the institutionalisation and operationalisation of the East African Community (EAC).

1.5 Hypotheses

- (i) The success of the East African Community (EAC) will to a great extent depend on the balancing of benefits accruing from the Community amongst the member states.
- (ii) The form of the institutions of the East African Community must conform to the functions they must perform to keep the economies of the East African region competitive in a rapidly changing world economy.
- (iii) Uncoordinated foreign policies amongst the three East African countries remain the major obstacle frustrating the growth of East African co-operation.

1.6 Methodology

The study will rely on both primary and secondary data.

(i) Secondary Data Collection

It entails the collection, analysis and review of published and unpublished materials and academic papers, journals, newsletters, electronic and print media articles and other periodicals. Important documents like the Treaty for the Establishment of the East African Community; the Agreement for the Permanent Tripartite Commission; the Headquarters Agreement; and others of relevance to East African co-operation will be analysed.

(ii) Primary Data Collection

It will involve interviews with relevant government officials, officials at the EAC Secretariat, and diplomats. Further, views would be sought from the business community, consumers of Community services, private citizens, and people with specialised knowledge on the subject within the academia.

1.7 Literature Review

A wide range of literature on regional co-operation and integration is analysed here to inform the investigation of East African co-operation. The literature has been divided into two categories. The first of these will cover literature on the intellectual history of regional co-operation and integration in Africa. This will primarily be concerned with analysing the Pan – Africanist debates of the early 1960s with respect to African post-independence development. In fact, as Ojo has observed, the struggle to develop new patterns of post-colonial continental and regional co-operative arrangements was, in a real sense, an aspect of the struggle to institutionalise Pan-Africanism⁹. The second section of literature covers regional co-operation and integration activities in the East African region. This is analysed within the time frame of the pre-independence and post-independence eras.

1.7.1 Regional Co-operation and Integration in Africa: An Intellectual History

Regional co-operation has been defined by Haas as ‘any interstate activity with less than universal participation designed to meet some commonly experienced need’¹⁰. The objectives of regional co-operation would thus vary from military, economic, social, political, technical or other residual interest. Co-operation ventures like the one that Eastern Africa is currently involved in are not new to Africa, as various co-operative arrangements existed between many African nations during the pre-independence period. These included the Royal West African Frontier Force whose concerns were

⁹ See Olatunde Ojo. “Regional Co-operation and Integration”, in Ojo *et al* African International Relations. Op. cit., pp142-181. p.143.

¹⁰ Haas. A. “The Study of Regional Integration: Reflections on the Joy and Anguish of Pre-Theorising”, in Leon N. Lindberg and Stuart A. Scheingold (eds). Regional Integration: Theory and Research. Cambridge, Mass.: Harvard University Press. 1971. pp. 71-90. p. 77.

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purely military; and the Union Douaniere de l'Afrique de l'Ouest (the Western African Customs Union) to name a few.

From the terminal years of colonialism, and particularly since 1960, African states have struggled to fashion new patterns of regional and continental co-operation for development. These efforts have often involved the 'creative destruction' of the colonial co-operative arrangements or their modifications to meet [specific] African needs and aspirations¹¹. But the main motive behind these efforts, as Jalloh has reported, was the creation of large international for economic considerations:

A motivating factor was consciousness of the small size of the countries involved and the realisation of many of them that without joining others into larger groups, they faced serious obstacles in promoting their economic development. In this, they were particularly influenced by the creation and success of the European Economic Community (EEC). The reasoning was that if even major countries like France and Germany felt the need for regional integration, such a need was even greater for more smaller and underdeveloped countries (like those in Africa)¹².

Ojo also adds that secondary politico-security motives reinforced the economic rationale behind the post-colonial efforts at co-operation. Small, economically and militarily weak, and politically insecure, the new states needed to present a collective front against the rest of the world, particularly the most developed of it, in order to break dependencies, political control and inferior status to arrest the balkanisation of Africa¹³. Further, there was a defensive motive arising from the fear of larger and powerful neighbours for smaller African states to co-operate. For example, the Union Douaniere et Economique de l'Afrique Centrale (UDEAC) was formed partly out of the fear of the economic threat posed by Nigeria and the Organization Commune Africaine et Mauriciene (OCAM) was inspired by the fear of Ghana and the Casablanca

¹¹ Olatunde Ojo. "Regional Co-operation and Integration". in Ojo *et al* African International Relations. op. cit. pp.142-181. p. 142.

¹² Jalloh, Abdul Aziz. "Recent Trends in Regional Integration in Africa". in Nigerian Journal of Internal Affairs, 6. 1 and 2, 1980, pp. 66-83. p. 72.

¹³ Olatunde Ojo. "Regional Co-operation and Integration". in Ojo *et al*. African International Relations. op. cit. pp.142-181. p. 143.

bloc¹⁴. The Communauté Economique de l'Afrique de l'Ouest (CEAO) was formed 'to counter-balance Nigeria's political and economic weight', in particular to check its attempts to organise a larger economic community¹⁵. In summary, economic, political, defensive, social, technical and strategic factors constituted the primary motivations for the formation of regional blocs in post-independence Africa.

Efforts to institutionalise the concept of Pan-Africanism in the 1960s structured and shaped the debate on the proper form and scope of African unity and development. The question of African post-independence development was a central concern for the emerging leaders and it was subject to controversy. As has been noted before, the debate was dominated by two schools that were diametrically opposed in their approach to African development – the Casablanca Group / Instant Unity School and the Monrovia Group / Gradualist School.

The clarion call of the 'Instant Unity' school was immediate continental unity. Africa had to come together and pool its resources so as to effectively face the daunting tasks of 'nation' building for the good of the people of the continent. Indeed, even within nation states, the frequent call for 'unity for development' attests to the very important place that this concept has come to assume in African political discourse:

There is perhaps no word more frequently used in African political discourse than unity. Within nation states, the frequent call for national unity as a prerequisite for development is heard at almost every national day and on the platforms of political rallies. The nation, divided into ethnic groups whose interests are often posed as antagonistic by political entrepreneurs, must be held together if socio-economic progress is to be ascertained¹⁶.

The Casablanca group of leaders believed that immediate political unification involving the direct surrender of sovereignty to a new central authority to operate on

¹⁴ Jalloh, Abdul Aziz. "Recent Trends in Regional Integration in Africa". Nigerian Journal of Internal Affairs. op.cit. pp. 66-83. p.72

¹⁵ Olatunde Ojo. "Nigeria and the Formation of ECOWAS". International Organisation. 22.1980. pp511-526. p.518.

¹⁶ P. Anyang Nyong'o. "Regional Integration in Africa: An Unfinished Agenda", in P. Anyang Nyong'o (ed). Regional Integration in Africa: Unfinished Agenda. Academy Science Publishers. Nairobi: 1990. pp.3-13, p. 3.

federalist arrangement held the greatest hope for African development. Kwame Nkrumah, one of the proponents of the 'instant unity school' argued:

In my view, a United Africa – that is the political and economic unification of the African continent – should seek three objectives. Firstly, we should have an overall economic planning on a continental basis, which would increase the industrial and economic power of Africa. So long as we remain disunited, so long as we remain balkanised... we shall remain at the mercy of colonialism and imperialism¹⁷.

Nkrumah envisaged a Ghana –Guinea union, a Ghana – Guinea – Mali union or a Ghana – Congo union to constitute a nucleus for a continental union. Other leading luminaries of this school were Sekou Toure of Guinea and Modibo Keita of Mali. The call for instant unity met with stiff opposition from Nigeria, which insisted that economic integration must precede political union and that economic integration itself had to begin at the sub-regional level and proceed in stages beginning with functional co-operation leading perhaps to a common market. This building – block approach underpins the main tenet of the Gradualist School.

The Gradualist School / Monrovia Group therefore favoured incremental co-operation in specific sectors leading, in some distant future, to a transfer of sovereignty to a central authority. Mwalimu Julius Nyerere, one the greatest proponents of this school, indeed advocated for a 'step – by - step' approach arguing that while continental unity was politically desirable, it was not practically implementable at once. He consequently argued that African unity would have to be achieved in stages. Regional economic groupings were a step forward as other forms of co-operation in non – controversial areas such as communication, education and cultural exchanges. This gradual functionalist approach was adopted to guide continental development due to several reasons.

First, functional co-operation in Africa had its roots in the colonial era and it therefore did not portend a radical departure from what the countries had already gotten accustomed to. The French, the English and Portuguese empires set up sub-regional arrangements to cater for particularistic economic interests. At independence, African governments inherited this spirit of, approach to, and methodology for

¹⁷ Kwame Nkrumah. London: Panaf, 1974, p.117.

organising interstate co-operation. This was to have long lasting implications in the post-colonial era.

Secondly, the incrementalist approach better lent itself to a reconciliation of such concerns as the need to protect national sovereignty and territorial integrity, and at the same time engage in co-operation. It hence derived its popularity from its protection of the *status quo* and its recognition of the primacy of national interests. Given the novel taste of power and the desire among the emerging elites to enjoy it to the fullness, the step-by-step approach was easily acceptable to the new leaders, as it did not advocate the immediate dissolution of the nation states to create a united African federal state. This would have meant that the various leaders in the newly independent states lose powers and privileges at the alter of African unification.

The 1960s and 1970s were decades replete with co-operation and integration initiatives amongst many states of Africa. These decades also witnessed the collapse of some of these initiatives due to lack of strong foundations to support them or their deliberate destruction as a result of political conflicts and disagreements amongst the state parties involved. For instance, economically, the former East African Community (EAC) made a lot of sense; but politically it failed to survive because the claims of national sovereignty, the lack of political will and ideological divergences of the member states called for its collapse¹⁸.

In West Africa, the Economic Community of West African States (ECOWAS) was formed, which even boasted of a standing military force to maintain peace and stability in the region. The Central African region formed the Union Douaniere' et Economique de l'Afrique Centrale (UDEAC), the Northern African region formed the Maghreb Union, the Eastern African region the former East African Community (EAC), while the Southern African region formed the Southern African Development and Co-ordination Conference (SADCC). Depending on the level or degree of discrimination that is eliminated, Bela Balassa came up with five idea types of regional co-operation

¹⁸ See P. Anyang Nyong'o. "Regional Integration in Africa: An Unfinished Agenda". in P. Anyang Nyong'o. Regional Integration in Africa: Unfinished Agenda. op. cit. pp.3-13. p. 5.

and integration organisations. These were: Free Trade Areas; Customs Unions; Common Markets; Economic Unions or Community; and Political Unions.¹⁹

Free trade areas eliminate tariffs and quotas. In customs unions, tariffs and quotas are eliminated and the member states have a common external tariff in place. In addition to these, the common market engenders a free flow of capital and labour; while economic unions or communities have all these attributes plus economic policy harmonisation. Lastly, political unions represent the highest level of co-operation, which encompasses all these characteristics, and there is a total unification of political institutions.

Commenting on forms of African co-operation with respect to the Western African region, Jalloh has observed that African regional organisations are economic communities, or intended to be so even when they go by different names:

They all aim at creating free trade among their members and joint co-ordination of commercial policies with respect to third parties. Besides, the movement of goods, there is also provision for the movement of persons among the members. Co-ordination of other policies, notably policies on foreign investments, transportation, and industrial and economic development, is also provided for. Finally there is the agreement to create and operate joint services in the area of education, infrastructure and research. Two of these regional organisations; OCAM and Conseil de l'Entente, also include co-ordination of foreign policies among the tasks of the regional organisations²⁰.

Yet a critical assessment of these co-operative initiatives paints a miserable picture of failure. Africa has not been able to move forward since concern for the sorry state of affairs has not necessarily led to action; nor have subjective yearnings for the betterment of the living standards of the people of Africa been commensurate with the ability to confront objective circumstances to change life for the better. The formation of the Organisation of African Unity did not change much. Instead of establishing a vibrant and active continental body that would destroy colonialism and build on its

¹⁹ Balassa, B. Theory of Economic Integration, Homewood, Illinois: Richard Irwin, 1961, p.18. See also Nye, Joseph S. "Comparative Regional Integration: Concept and Measurement". International Organisation, 22, 1968, pp.849-71, p.860. Also, Renniger, John P. Multinational Co-operation in West Africa, New York: Pergamon Press, 1969, p. 39.

²⁰ Jalloh, Abdul Aziz. "Recent Trends in Regional Integration in Africa". Nigerian Journal of Internal Affairs, op. cit. pp.66-83, p. 74.

ruins a system that would add greater impetus to the quest for African development. Africa created an exclusive club that was more content with the past achievements of its members than harnessing the creative energies of their highest aspirations²¹.

By the end of the 1970s, Africa had squandered two decades pursuing development that lacked a clear vision for its future. The functionalist approach, which had been adopted, to guide African development seems to have greatly floundered. It has been argued that its failure was a result of its elusive treatment of politics. The functional approach has a much-restricted place for politics in the integration enterprise (with) the central position given to experts and technocrats as opposed to political decision-makers.²² Yet the pervasive nature of politics in every sector of life in Africa cannot just be ignored. Therefore, it is prudent that political decision makers are incorporated in the mainstream if the success of co-operation and integration is to be assured.

In 1981, the OAU produced the Lagos Plan of Action (LPA) to act as a policy framework paper for accelerated development in Africa so as to redress this deep economic malaise. Indeed it re-echoed the views of Nkrumah's 'Instant Unity' school as it emphasised unity as the basis upon which Africa can be able to address its problems successfully:

The need to establish institutions which can help member states collectively to develop capabilities and infrastructures essential for their economic and social development, and which individually they are too poor to set up, was recognised soon after the establishment of the Economic Commission of Africa (ECA)²³.

Despite the clear identification of Africa's development priorities and the strategies to achieve them by the LPA, it will appear that Africa again ran into a policy lapse somewhere on the way. By the end of the 1980s, and with a decade gone since the adoption of the LPA, nothing substantial seems to have been done in terms of galvanising continental resources for purposes of self-reliant development. If anything,

²¹ P. Anyang Nyong'o. "Regional Integration in Africa: An Unfinished Agenda". in P. Anyang Nyong'o (ed). Regional Integration in Africa: Unfinished Agenda, op. cit. pp.3-13, p. 4.

²² Jeggan C. Senghor. "Theoretical Foundations for Regional Integration in Africa: An Overview." in P. Anyang Nyong'o. Regional Integration in Africa: Unfinished Agenda, op. cit. pp. 17-31, p. 26.

²³ The Lagos Plan of Action. OAU: Addis Ababa. 1981, p.91.

increasing poverty has been the general trend (with few governments devising innovative policies to arrest this situation. The renewal of co-operation arrangements between the three East African countries appears to be informed by recognition of this reality.

1.7.2 Regional Co-operation and Integration in Eastern Africa

The Pre-Independence Period

Regional co-operation in East Africa dates back to the late 19th century when recommendation was made that the territories that are now Kenya and Uganda be consolidated into one political unit. This proved unworkable due to the increasingly dissimilar colonial policies that were in operation in the two territories. This notwithstanding, several co-operative arrangements were established between the two territories. Examples included the construction of the Uganda Railway that was completed in 1901; the establishment of the Court of Appeal for Eastern Africa in 1902; the formation of a Postal Union and a Customs Union in 1911 and 1917 respectively; the establishment of the East African Currency Board that assumed the issuance of East African money in 1920; and the opening of the joint East African Office for Trade and Information in 1925²⁴. Since Tanzania (then Tanganyika) was not a British colony, it was not part of the arrangement. All these co-operation arrangements came to be extended to Tanganyika after the end of the Second World War (WWII) when on the defeat of Germany it was made a UN mandate under Britain.

The "Closer Union or Settlers' Union Movement" proposed East African federation in 1924. The main motivation behind this campaign was the creation of large colonial units to bolster Great Britain's status as a world power. Eastern African federation was the subject of five state papers. The first of these the Ormsby – Gore Commission of 1925 reported that federation was undesirable due to expense and strong opposition by Africans and Indians. Instead it recommended economic co-ordination to be achieved

²⁴ See Sohn, Louis B. (ed), Basic Documents of African Regional Organisations, Vol. III, New York: Oceana Publications Inc., 1972, p. 1095.

by the holding of 'territorial Governors' Conferences'²⁵. The Hilton Young Commission of 1927, which was set up to examine the question of 'federation or some other form of closer union for effective co-operation between the different governments in Central and Eastern Africa', favoured the formation of a federation albeit with reduced settler influence and increased imperial protection of African interests²⁶.

Rejection of the Hilton Young Commission Report by the Colonial Office and the settlers in Kenya and Uganda resulted in Sir Samwel Wilson being dispatched to East Africa to examine its recommendations 'on the spot'. Sir Wilson proposed the formation of a High Commission to administer the various common services; that policy on African interests remain a territorial matter; and that Kenyan settlers be given an enhanced position with a majority in the Legislative Council (Legco)²⁷. The Labour Government that came into office in 1929 rejected Sir Wilson's proposals and produced its own report with a High Commissioner acting as the instrument of the Colonial Secretary to administer common services and prevent racial discrimination by overseeing the activities of the territorial governments²⁸. When this did not satisfy settlers and the people of East Africa, the matter was referred to both houses of the UK Parliament. The Joint Select Committee reported in 1931 and advised against political association due to both expense and an overwhelming lack of consensus among the population of East Africa on the issue. It further recommended the intensified use of Governors' conferences to secure the benefits of economic co-

²⁵ Colonial Office, Report of the East African Commission (W.G. Ormsby-Gore, Chairman), Cmd 2387. London: HMSO, 1925.

²⁶ Colonial Office, Report of the Commission on Closer Union of the Dependencies in Eastern and Central Africa (Sir E. Hilton Young, Chairman), Cmd 3234, London: HMSO, 1929.

²⁷ Colonial Office, Report of Sir Samwel Wilson on his Visit to East Africa, Cmd 3378, London: HMSO, 1929.

²⁸ Statement of the Conclusions of HGM in the United Kingdom as Regards Closer Union in East Africa, Cmd 3574, London: HMSO, 1930.

ordination, which was an echo of the earlier Ormsby-Gore Commission report²⁹. The matter rested there until after the Second World War (WWII).

Immediately after the War, the Labour Government proposed a loose co-operation rather than federation of the East African territories in tandem with the recommendations of the report of the Joint Select Committee. This resulted in the establishment of the East African High Commission (EAHC) on 1st January 1948 that comprised the three territorial governors and a secretariat. It was charged with the administration of the common market and a number of common services that included the East African Railways and Harbours; the East African Posts and Telecommunications; Income Tax, Customs and Excise Departments; and existing technical and research services³⁰. The common market still continued to be fractious especially with respect to the sharing of benefits accruing from co-operation, where Kenya was perceived to be reaping windfalls at the expense of Uganda and Tanganyika.

These disagreements assumed a higher intensity in the years that followed and Uganda, in 1958, proposed a system of fiscal compensation for loss of duty on imports from Kenya to the other two territories. When negotiations failed to produce an acceptable solution, a commission was appointed under the chairmanship of Sir Jeremy Raisman to 'examine the arrangements, to consider their advantages, or modifications to them'. The Raisman Report presented the most careful and detailed account available on the operations of the East African common market. The Report held:

That the Commission was well aware of the possible disadvantages of the common market for Uganda and Tanganyika arising from the position of Kenya as the more developed territory, but they also noted the beneficial 'spill-over effects' on the other territories of the development of Kenya... The common market benefited East Africa as a whole, that its workings could be validly criticised for producing an unequal distribution of benefits, rather than

²⁹ House of Commons. Report of the Joint Select Committee on Closer Union in East Africa and Minutes of Evidence. HC 156. London: HMSO. 1931, 3 Vols.

³⁰ Sohn. Louis B. (ed). Basic Documents of African Regional Organisations. Vol. III. op. cit. p.1095.

imposing losses on any member, and that no territory would be likely to gain from withdrawing³¹.

It was further pointed out that as development tends to bring increased specialisation and increased reliance on activities in which the minimum efficient scale of operations is large, the contributions which the common market arrangements can make to economic growth are likely to be greater in the future than in the past.

The biggest contribution of the Raisman Report was its attempt to redress the economic and development imbalances inherent in the common market. It proposed a redistributive mechanism that was designed to recompense Uganda and Tanganyika out of Kenya's contribution to a common pool:

The common market should be retained because it benefited all the East African territories, although not equally; and that an income pool should be set up into which each territory would pay 40% of company income tax and 6% of customs and excise revenue, and from which each would receive an equal share, a fifth, with the remainder going to the East African High Commission for non-self financing services³².

As independence approached, revision talks on the EAHC were held in June 1961 with delegates from Kenya, Uganda and Tanganyika; the British Government; the EAHC itself and Zanzibar sent an observer. It was agreed that the common services were beneficial and therefore they should be retained. The East African Common Services Organisation (EACSO) was formed to take over the administration of these services from the EAHC towards the end of the year when Tanganyika became independent scheduled for the 28th December 1961. This it did in November 1961.

The main institutions of the EACSO were the Common Services Authority; the Central Legislative Assembly; four ministerial committees; and the Secretary General. Responsibility for decision-making under EACSO was vested in the East African Common Services Authority, which consisted of principal elected ministers of the three territorial governments (and later, the three heads of state). The Central Legislative Assembly passed legislation relating to co-operation matters. It comprised twelve (later

³¹ Colonial Office, East Africa: Report of the Economic and Fiscal Commission, Cmd 1279, London: HMSO, 1961. See also analysis in Hazlewood, A. Economic Integration: The East African Experience, op. cit. p.35.

³² Ibid.

fifteen) members of the 'triumvirates' of ministers, the secretary general, the legal secretary, and nine other members elected by the respective legislatures of each territory. The ministerial committees were organised into four triumvirates with responsibility for communication, finance, commercial and industrial co-ordination, and social and research services.

The secretary general was the chief executive officer of the EACSO, assisted by a Public Service Commission, a general manager of the Railways and Harbours Administration, a post master general of the Posts and Telecommunication Corporation, the legal secretary, a financial secretary, and an auditor general. It has been argued that the vesting of executive control of the Organisation in the hands of the Authority proved a major obstacle to the development of a vibrant co-operation arrangement as national interest took precedence over regional affairs:

The placing of the control of the Organisation under the Authority, in the hands of the triumvirates of territorial ministers led to EACSO affairs taking second place to national affairs. The ministers were primarily concerned with their national ministries, and an unwillingness or inability to devote enough time to EACSO matters led to delays, infrequent meetings of the triumvirates, and difficulties for the officials of the Organisation in obtaining directives and decisions. The leaders found it difficult to identify themselves as East African ministers rather than territorial ministers...Ministers played the role of delegates mandated by their governments in inter-territorial negotiations rather than of leaders of a supranational authority³³.

EACSO carried the three territories into independence. Tanganyika became independent on December 10 1961, followed by Uganda on October 10 1962, and Kenya's came on December 12 1963. The question of East African federation had been raised by Julius Nyerere at the Addis Ababa Conference of independent African states in 1960 urging for simultaneous independence for the three territories of East Africa as 'one political unit'. A lack of strong political commitment on the part of the leaders and their preoccupation with the independence of each of the territories piecemeal derailed the process. Therefore for some time economic co-operation continued as political co-operation stagnated.

The Post-Independence Years

³³ Hazlewood, A. Economic Integration: The East African Experience, op. cit. p. 37.

The common market had continued to raise dissatisfaction especially in Uganda and Tanzania (the union that had been formed by Tanganyika and Zanzibar) whose levels of economic development and industrialisation had consistently lagged behind as Kenya's steadily grew. The members manifested the strains and stresses in the common arrangements in unilateral withdrawals. For instance, Tanganyika had withdrawn from the East African Navy, and Uganda from the East African Tourist Travel Association; the East African University had broken into three separate national universities; and the decision to issue three separate currencies was interpreted as the 'death knell' of the common market.

Efforts were made to work out formulas to iron out the differences to ensure the sustenance of the common arrangements. The common market was at the throes of death as Tanzania threatened to withdraw altogether. Despite the fact that the Ugandan and Tanzanian economies expanded at a faster rate than Kenya's, Kenya was accused of benefiting more on account of its higher inter-territorial trade surpluses and industrial expansion. The Kampala – Mbale Agreements failed to save the situation even when it sought to redistribute certain key industries amongst the three member states. The Agreements had allocated industries dealing with tyres, bicycle parts and fertilizers to Tanzania and Uganda. The two were again permitted, through the agency of a regional quota committee's authorisation, to institute quotas on certain Kenyan products like beer and galvanised iron. Kenya not only failed to ratify these Agreements, but it also proceeded to establish a tyre factory in its territory. Tanzania in retribution imposed unilateral import quotas and other restrictions on all Kenyan products³⁴.

Consequently, Kenya called for a review of the Common Services Agreement and discussions on all aspects of economic co-operation in June 1965. The ensuing heads of state summit in Mombasa established a Commission on the Common Market and Common Services made up of three ministers from each state with an independent chairman, a UN expert Kjeld Philip, to negotiate what was envisaged as a permanent solution – the Treaty for the East African Co-operation. The Commission first met in

³⁴ See Olatunde Ojo, "Regional Co-operation and Integration". in Ojo *et al* African International Relations. op. cit. pp.142-181. p. 158

January 1966, submitted its report four months later, and debate on its proposals continued into 1967. On June 6 1967, the Treaty was signed by the heads of state in Kampala, coming into force on December 1 1967. It established an East African Community, which included an East African common market³⁵.

The main objective of the Community was 'to strengthen and regulate the industrial, commercial and other relations of the Partner States to the end that there shall be accelerated, harmonious, and balanced development and sustained expansion of economic activities the benefit whereof shall be equitably shared'³⁶. This was to be achieved through various measures that included: the establishment and maintenance, subject to certain exceptions, of a common customs and excise tariff; the abolition generally of restrictions on trade between the member states; the establishment of an East African Development Bank; the harmonisation of monetary and fiscal policies for the proper functioning of the common market; the operation of common services; the approximation of commercial laws; and such other activities calculated to further the aims of the Community³⁷.

The institutions of the Community were the East African Authority; the East African Ministers; the East African Legislative Assembly; and the Secretariat. Others included the Common Market Council; the Common Market Tribunal; the Communications Council; the Finance Council; the Economic and Consultative Council; and the Research and Social Council³⁸. Other than a few exceptions, the Community took over the institutions of EACSO. One of the new institutional innovations was the creation of the East African or Community Minister to project the interests of the Community within their respective governments. Ten years later, in 1977, the common services had all but collapsed and the Community had ground to a halt. While it is true that the

³⁵ See Springer, Allen L. "Community Chronology". in Christian Potholm and Richard Fredland (eds). Integration and Disintegration in East Africa. Lanham, Maryland: University Press of America. 1980. pp. 3-34. p.10.

³⁶ Preamble. Treaty for the East African Co-operation. Arusha: EAC Secretariat, 1967.

³⁷ Ibid.

³⁸ Ibid. Article 3.

military take-over in Uganda in 1971 had started the process towards disintegration, the collapse of the former Community is attributed to several factors.

The first one was polarisation and perception of unequal gains accruing from the Community. Kenya, the most developed of the three countries continued to develop and gain more at the expense of Uganda and Tanzania. For example, the common external tariff (CET) imposed by the Community had the effect of protecting Kenya's industries from both internal and external competition. The result was that Uganda and Tanzania were forced to buy Kenyan goods at much higher prices than they would had the CET not shut out products from other sources outside the Community. For those companies that wanted to beat the CET by establishing within the Community, Kenya remained the destination of choice owing to its large industrial base and better infrastructural facilities. It was thus estimated that the net capital inflows into Kenya between 1969 and 1976 stood at about \$184.9 million compared to Tanzania's \$95.9 million and Uganda's \$31.0 million³⁹. This meant that Kenya dominated Community trade, amassing colossal trade balances against its partners thereby seriously widening the economic and industrialisation gap between them.

The increasing economic gap between Kenya on the one hand, and Uganda and Tanzania on the other illustrates one popular theory while challenging another. It demonstrates that when states at different levels of development engage in integration schemes involving customs unions or common markets, there is a tendency for growth to occur in those states with an initial advantage thus becoming the poles of growth. Resources tend to move from the states that were initially disadvantaged to the more advantaged states. This leaves the former even poorer becoming the poles of stagnation, a phenomenon called the 'back-wash effect' in contrast to the 'spread effect' where resources move from the richer areas to accelerate growth in the poor areas. The 'back-wash effect' leads to economic polarisation⁴⁰.

³⁹ Mazzeo, D. "Problems of Regional Co-operation In East Africa". in Christian Potholm and Richard Fredland (eds). Integration and Disintegration in East Africa, op. cit. pp.82-133. p. 103.

⁴⁰ Olatunde Ojo. "Regional Co-operation and Integration" in Ojo *et al* African International Relations. op. cit. pp. 142-81. p.160.

In the other, the traditional neo-classical theory of integration⁴¹, it is argued that customs unions or common markets are beneficial only when they lead to trade creation, that is when high cost products in one state are replaced by low cost imports from other members of the common market. Through the removal of trade barriers competition is increased among similar industries leading to a pattern of specialisation in which each country produces and supplies to the other members of the union the products in which it has a comparative advantage. The high cost industries will tend to be displaced by their low cost competitors in other members of the union. Through the creation of intra-union trade, each member will be supplied from the lowest cost source within the union⁴².

The second factor was the lack of appropriate compensatory and corrective measures to redress the economic imbalances and polarisation. The compensatory or equalisation mechanism involves measures taken to redistribute benefits from those groups of members who are advantaged to those who suffer losses. Examples of these include the collection and sharing of customs levies according to pre-agreed formula that favours the disadvantaged, and the institutionalisation of transfer taxes that provide revenue as well as protecting the industries of the weaker parties.

The other, the corrective mechanism, aims to create suitable conditions for industrialisation and development at the poles of stagnation, and thereby correct the underlying causes of the economic imbalances and the resultant polarisation. The setting up of funds for industrialisation and development or the establishment of development banks from which members derive benefits at inverse ratio to their initial contributions is an example of such a mechanism. Harmonisation of fiscal incentives for foreign investors, a system of industrial licensing that discourages duplication, deliberate regional planning that involves the dispersal of industries to all regions also fits into this mechanism⁴³.

⁴¹ See Bela Balassa, Theory of Economic Integration, op. cit. See also Lipsey, R.G. "Theory of Customs Unions: A General Survey". Economical Journal 70. 278. 1960, pp 3-17.

⁴² Hazlewood, A. African Integration and Disintegration. London: Oxford University Press. 1967, p.6.

⁴³ Olatunde Ojo. "Regional Co-operation and Integration". in Ojo *et al.* African International Relations, op. cit. pp 142-181. p. 161-2.

The establishment of the East African Development Bank (EADB) failed to provide an infrastructure to enable these mechanisms to work. Its main shortcoming was that its lending operations were on a limited scale obstructing its intended role as a catalyst for complementary industrial investment development. Its investments in textiles, sugar, tyres, cement and paper were said not to be particularly relevant to the aim of making the economies of the three states complementary. But then, as it has been argued, unless there was regional planning so that there could be a 'clear and agreed pattern of industrial specialisation in which the Bank's investment (policies) could fit', the Bank alone could not effect complementarity. The Economic Planning Council, which would have played this role, was, unfortunately, only an advisory organ. Further, the expectations for the impact of relocating the headquarters of the common services, decentralising some of their operations to different parts of the Community, and subsidising different parts of the services were clearly too high and hence unachievable. The reality on the ground remained that a big percentage of the activities and therefore of investment and employment continued in Nairobi⁴⁴.

Indeed, some of the services almost became a Kenyan preserve. For example, 80% of the activities of the East African Airways Corporation were estimated in 1977 to originate and terminate in Kenya. Serious conflicts arose with respect to community and national policies on transport. While Tanzania wanted the East African Railway Corporation strengthened, for instance, Kenya opted to develop an excellent road network that undercut the Railway Corporations market ensuring that it could never post any profits. With respect to the Airways Corporation, while Tanzania wanted it to concentrate on developing and expanding domestic routes within the Community; Kenya favoured the more profitable international flights as they brought in tourists and large amounts of foreign exchange. The net result was that the Airways Corporation

⁴⁴ Mazzeo, D. "Problems of Regional Co-operation in East Africa". in Christian Potholm and Richard Fredland (eds). Integration and Disintegration in East Africa. op. cit. pp.82-133. p.86. See also Hazlewood A. "Economic Instrumentalities of Statecraft and the End of the East Africa". in Christian Potholm and Richard Fredland (eds). Integration and Disintegration in East Africa. op. cit. pp.134-187. p.129.

amassed most of its benefits in Nairobi, a situation that exacerbated the economic polarisation leading to the eventual fallout:

The typical tourist flew into Kenya's airport via East African Airways, lodged at a Nairobi hotel...and drove or was chauffeured to Tanzania for two or three days of game viewing in a Tanzanian game park. Consequently, of perhaps US\$2200 paid by the tourist, as little as US\$200 was earned by Tanzania while the remainder, excluding airfare, was earned by or at least spent in Kenya⁴⁵.

The failure of compensatory and corrective devices to address economic imbalances reinforces the relevance of two theories on integration among Third World countries. The first of these posits that compensatory measures are never, by themselves, sufficient to move integration forward to higher levels. Since they involve mere fiscal transfers, these measures tend to be seen by the less developed of the partners as little more than the equivalent of the customs revenues they would have collected had the co-operative arrangement not excluded or restricted extra-regional imports. Moreover, such fiscal transfers are not and can in no way be a 'substitute for the employment opportunities and such spin-offs as improved local skills, technology transfers and infrastructure – not to forget prestige – which are brought by industrial development'⁴⁶. For this reason compensatory mechanisms are seen as far less important than corrective measures which lead to really redistribution of reproductive capacity and structural transformation in the less-developed members of the community when they are successfully implemented.

Corrective measures, because of their central role in determining the opportunity cost of participation for the members, represents the most significant and most divisive issue in the integrative process. It makes them assume political prominence in the negotiation of co-operative treaties and the actual implementation of their terms. Agreement on corrective measures is always difficult because the more developed and less developed partners have different perceptions of the cost-benefit as well as

⁴⁵ Fredland, Richard. "Who Killed the East African Community?" in Christian Potholm and Richard Fredland (eds). Integration and Disintegration in East Africa, op. cit. pp.59-82, p.67-8.

⁴⁶ Ravenhill, John. "The Theory and Practice of Regional Integration in East Africa". in Christian Potholm and Richard Fredland (eds). Integration and Disintegration in East Africa, op. cit. pp. 35 – 58, p.47.

different negotiating strategies and styles. Furthermore, the more developed partners are being called upon to forego in favour of their less developed partners the scarce resources for development, which would, in the absence of the corrective mechanisms ordinarily accrue to them. Such difficulties can be avoided through the use of package deals. The linkage of issues like treating tariff reduction with allocation of industries, harmonisation of incentives, development bank loans, and fiscal transfers, would not only result in the 'updating of common interest' thus enhancing both the scope and level of regional integration, but would also offer members the opportunity to trade concessions in different areas, compensating a member that fails to gain in one area with concessions in another⁴⁷.

Sadly, in Africa things have tended to be treated in narrow isolation building strong reluctance to link issues this way because integration is seen as coming in stages, each with its own unique problems that must be solved at the opportune time. This piecemeal approach is grounded in the historical experience of underdevelopment and the fear of the unknown. The attitude of 'crossing the bridge when we get to it', which itself is a product of underdevelopment, makes it much more difficult to predict or anticipate with reasonable certainty the scope and extent of the problems:

We know we have to cross a bridge, but how long a bridge, where it is located, and the maximum tonnage it can handle...we do not know. Linking present issues with future ones appears unrealistic as it puts some members in the unenviable position of accepting some real immediate costs in the hope of some possible but uncertain gains in future. This limitation when coupled with the importance attached to industrial development explains why many members of Third World integration schemes give the impression that 'they want to see the smoke coming from the factories before signing the agreement for the common market'⁴⁸.

The requirement for relatively high levels of political integration and co-ordination of policies right from the outset, with the different stages of integration being combined for more acceptable package deals to ensure success becomes pertinent. As

⁴⁷ Jalloh, Abdul Aziz. "Recent Trends in Regional Integration in Africa". Nigerian Journal of Internal Affairs, 6. 1 and 2. op. cit. pp. 66-83. p. 76.

⁴⁸ Axline, Andrew W. "Underdevelopment, Dependence, and Integration: The Politics of Regionalism in the Third World" in International Organisation, 31(1), 1978, pp.953-73. p.958.

Axline has further observed, rather than a logic that moves from rather modest beginnings of economic integration to incrementally higher levels of political co-operation, the logic of integration among underdeveloped countries sees little likelihood of success if integration is undertaken at relatively low levels and a greater possibility of success if only a relatively high level of political integration is undertaken at the outset. Efforts based on less comprehensive political integration are more likely to be subject to a disintegrative dynamic⁴⁹.

The third factor was the inadequacy of supranational institutions. Despite the variety of institutions formed to carry forward the process of integration in the East African Community, the basic organs, however, remained intergovernmental with the East African Authority being the supreme decision making body. The five ministerial councils were only advisory to the Authority attendant with providing executive direction to the Secretariat; the Legislative Assembly had limited constitutional powers, while the judicial organs like the Common Market Council and the Common Market Tribunal had little muscle of their own. None of these could even be compared with the colonial civil service, which was a surrogate regional authority with veritable hegemony over the area, performing the task of conflict manager and initiating new areas of co-operation. With independence, and especially in the defunct EAC, co-operation as Ravenhill found out moved from the hegemony of the colonial civil service to power bargaining amongst equals in the settlement of disputes and in the initiation off new areas of co-operation. There was, moreover, no intention or willingness to cede to the regional Secretariat the powers necessary to enable planning to be done on common market requirements rather than on national needs⁵⁰.

Although the diversity of the institutional machinery of the former Community looked impressive, it however, lacked the autonomous decision making power that characterised the Commission of the EEC (now the EU). The retention of decisional

⁴⁹ See Axline Andrew W. "Integration and Development in the Commonwealth Caribbean: The Politics of Regional Negotiation" in International Organisation, 32 (4), 1978. pp. 99-117. p.102-3

⁵⁰ Ravenhill. John. "The Theory and Practice of Regional Integration in East Africa". in Christian Potholm and Richard Fredland (eds). Integration And Disintegration in East Africa. op. cit. pp. 35-58. p. 40.

power in the Authority circumscribed the bureaucracy dampening its initial enthusiasm and at the same time discouraged too bold initiatives by the Community Ministers for fear of being disavowed by their presidents. On the whole, however, it would be incorrect to assert that the former Community's institutions were inadequate to move integration forward. The weaknesses displayed were essentially defects of ability on the part of the operators of the institutional machinery. The institutions, for example, favourably approximated those of other regional schemes like the EEC. If it lacked autonomous decision-making powers, it nonetheless enjoyed a remarkable financial autonomy than many other regional co-operation organisations. The efficacy of the EAC institutions can, in fact, be clearly illustrated by the new procedures that were devised to avoid problems of budget approval and policy guidance when the Authority broke down in 1970. The fact that the EAC survived this way for seven years is a clear indication of the suitability of the components of the institutional machinery, and the commitment of the Community officials like the Secretary General and the East African Ministers⁵¹.

The collapse of the Community was therefore not solely a result of the apparent institutional weaknesses. Mazzeo identifies what he has called "the personalisation of power in the Authority" as having increased the danger of instability and transformed personal rivalries into national and intra-regional conflicts⁵². The personalisation of power and the decision making process enabled each head of state, by an act of own whim and caprice to determine the fate of the Community. Nyerere's refusal to call a meeting of the Authority on account of his dislike for Uganda's Idi Amin can only be explained in this terms and would almost be unthinkable in a situation of institutionalised power. The desire to personalise power was a product of the colonial experience and was exacerbated by the exigencies of nation building, the low level of industrialisation and the lack of organisational pluralism within the Community:

The stress and urgency of nation building demand(ed) the creation of a strong central government facilitating the identification of governmental with

⁵¹ Mazzeo, D. "Problems of Regional Co-operation in East Africa". in Christian Potholm and Richard Fredland (eds), Integration and Disintegration in East Africa, op. cit. pp.82-133. p. 91.

⁵² Ibid. p. 93-4.

presidential power. The low level of industrialisation, by making it difficult for pluralist interest groups to emerge, equally strengthens the tendency towards concentration and personalisation of power, breeding instability⁵³.

The fourth factor was ideological differences and economic nationalism. While there is little question that there was an increasing ideological division amongst the partner states; with Tanzania and Uganda before the Amin era taking the socialist path and Kenya remaining avowedly capitalist, it is not clear whether this ideological divergence was a cause or effect of the economic polarisation in the Community. What is clear is that the pursuit of these divergent ideologies appeared to have had consequences, which magnified the stresses amongst the states accelerating the speed to the eventual crumple. Socialism caused serious socio-economic disruptions in Uganda and Tanzania while capitalism ostensibly accounted for Kenya's socio-political stability and economic progress.

Further, while Kenya's stronger economic base and stable capitalist system allowed it to attract external investment, and to exploit the opportunities availed by the Community, Tanzania's weaker economy and the socialist system scared external investors and hence impaired the country's ability to exploit community opportunities. Kenya, for example, was able to develop its tourist trade, whereas Tanzania's stagnated and even receded into a slump. This widening economic gap and domestic stresses came to be explained and couched in ideological terms. Tanzania was to ridicule Kenya's stable growth as based on a 'man-eat-man' philosophy to which Kenya responded by describing Tanzanian socialism as founded upon the principle of 'man-eat-nothing'⁵⁴. Tanzania then moved to prevent the intrusion via Kenya of 'bourgeois capitalist values and decadence'; to terminate Kenya's exploitation of their domestic market; and insulate its people from Kenyan affluence that was already causing large scale smuggling of currency, coffee and other consumer goods putting its socialist programmes in jeopardy by closing the common border. This precipitated a chain of reactions that ended in the collapse of the Community.

⁵³ Ibid. p.111.

⁵⁴ See Olatunde Ojo, "Regional Co-operation and Integration", in Ojo *et al.* African International Relations, op. cit. pp.142-181, p. 169.

Ideology *per se* therefore did not cause the collapse of the Community. Rather it was the widening economic gap, resulting in economic nationalism, which structured, gave content to and reinforced ideological differences. It was economic nationalism and competition among member states, which tend to intensify and harden attitudes towards ideological differences. Ideology in this context is only a scapegoat to subsume the economic nationalism that is at play. Hazlewood has concluded that it would therefore be a 'conclusion of despair that mutually beneficial co-operation requires a close similarity of social and political outlook'⁵⁵. Instead, it can be argued that had Kenya, the linchpin and core state of the Community, been willing to close the economic gap between itself and its partners by making greater sacrifices of national gains, the long term decay of the Community would have been averted. Indeed, there is a theory of increasing popularity that the existence of a core state, with economic and political interests in furthering regional co-operation and integration, and capable of making the necessary side payments to weaker partners is essential to the success of an integration scheme. In fact Nigeria has played this role very well in the Economic Community of Western African States (ECOWAS) and this has kept that regional organisation aloft⁵⁶

The last factor was the influence of external actors. Numerous multinationals and their subsidiaries capitalised on Kenya's initial advantage, extracted generous concessions on further foreign investment and then tried to service the regional market from plants situated in Kenya. The close relationship that developed with these foreign partners - notably multinationals from the United Kingdom, the United States and West Germany - tended to be viewed by the Kenyans as a more attractive option than the Community as prospects continued to grow for export rather than import substitution industries. This scenario was replicated in Tanzania not only with Western multinationals but also with the Eastern Bloc, particularly Socialist China. The

⁵⁵ Hazlewood, A. "Economic Instrumentalities of Statecraft and the End of the East African Community". in Christian Potholm and Richard Fredland (eds). Integration and Disintegration in East Africa. op. cit. pp.134-187, p. 137.

⁵⁶ Olatunde Ojo. The Core State in Third World Economic Integration: Nigeria and ECOWAS. (Unpublished Manuscript). Lagos: University of Port Harcourt. 1981.

competition thus extended to regional partners. external markets for their raw materials and agricultural produce, as well as efforts to woo foreign skills and technology⁵⁷.

The competition for foreign partners had three main consequences. One, disparate conditions were created in terms of tax incentives, patent laws, labour conditions, and foreign exchange privileges, all of which 'impeded the co-ordination and harmonisation of national development plans with respect to external resource procurement so essential for Pan-African regional integration'. The duplication of plants within the Community only benefited the multinationals, since it was only they that had the capacity to establish uneconomic plants protected from within the Community by the tax system and from extra-regional rivals by the common external tariff (CET). These inefficient mini-plants further undermined the realisation of economies of scale, which is one of the principal justifications for the creation of customs unions⁵⁸. Within the context of the defunct EAC, influence of external actors and multinational resulted in the construction of a tyre factory that was meant for Tanzania in Kenya; the building of the Tanzam Railway by Tanzania in collaboration with Zambia without reference to the East African Railways Corporation; and the establishment of a plywood manufacturing plant in each of the member states in competition with the single community facility that was already functioning.

Inefficient production means high production costs resulting in high prices for the finished goods. This, made worse by the natural proclivity for multinationals to inflate prices, explains why products manufactured in Africa are notoriously more exorbitant than imported brands. The multinationals are able to drive prices to the skies by manipulating supply and demand to maximize their own profits at the expense of the host countries. The inflation of prices of farm machinery, for instance, worsened the balance of trade of Tanzania to the advantage of Kenya, and Tanzania in retribution and in an apparent effort to conserve its foreign exchange slapped a ban on intra-

⁵⁷ Mutharika, B.W.T. "Multinationals in Regional Integration: The African Experience". in African Review, 5(4), 1975, pp.18-41. p. 27.

⁵⁸ Nnoli, Okwudiba. "External Constraints on Pan-African Regional Integration". Nigerian Journal of Internal Affairs, 4(1&2), 1978, pp. 54-77, p.69-70.

community imports of largely consumer goods and to stop transferring funds to the headquarters of the community corporations⁵⁹.

The last consequence of external influence is what has been called 'intra-imperialist rivalry'. This kind of influence leads to the creation of *de facto* zones of influence, which in turn alters the 'strategic image' of the partners, changing their perceptions of the balance of power amongst themselves fuelling further distrust and suspicion⁶⁰. For example Kenya's Western connection added to its increasing economic superiority elevated it to the status of an African middle power – a sub-imperial state – with capacity to undermine the legitimate interests of both Uganda and Tanzania. As Uganda and Tanzania perceived themselves as having been relegated to a subordinate position, they sought to compensate their loss of regional influence by building partnerships with other extra-regional players. Tanzania established bilateral co-operative and trade agreements with China while Uganda went in for Arab financial aid and Soviet arms. As these divergent external affiliations strengthened over time, intra-regional ties correspondingly weakened and it was a matter of time before the Community collapsed

1.8 Theoretical Framework

It is a fundamental truism that a systematic search for knowledge will always prove more fruitful than a haphazard process of cumulating information without the vaguest idea of how the bits and pieces fit into an overall pattern. Theory provides the parameters within which the search for knowledge can be done. Indeed, by formulating explicit models and constantly readjusting them in light of their inadequacies as guides to empirical investigation, one can engage in a process that allows for more certain correction of error, and the cumulation of knowledge within a consistent framework⁶¹.

⁵⁹ See Olatunde Ojo, "Regional Co-operation and Integration", in Ojo *et al.* African International Relations, op. cit. pp.142-182, p.17.

⁶⁰See Mugomba, Agrippah T. "Regional Organisations and African Underdevelopment: The Collapse of the East African Community". in Journal of Modern African Studies, 16(2), 1978, pp.10-23.

⁶¹ See Stephen George, Politics and Policy in the European Union, op. cit. p.275.

This study adopts functionalism⁶² and its offspring, neo-functionalism to guide its investigation of East African co-operation.

Functionalism is deeply embedded in the history of regional co-operation and integration in Africa. As it has been noted elsewhere, functional co-operation in Africa was started during the colonial period when the colonial powers established co-operation schemes in various economic and non-economic sectors. This resulted in the formation of functionally specific organisations that were either customs unions or common defence communities. This approach and strategy to co-operation was inherited by African states after independence. The defunct EAC, for instance was a customs union that was organised along functional lines on the basis of common services. Given this history of functional co-operation in the continent, any investigation of African regional co-operation and integration must be guided by functionalism and neo-functionalism.

Functionalism operates on two propositions. The first one is that the ultimate goal of integration is to build a supranational authority in which the importance of the state is either overridden or altogether eliminated. The second is that the end product of integration is to build an international community, which is increasingly tied together by virtue of functional interactions without necessarily entailing the end of the nation state⁶³. The functional approach to integration is therefore greatly pre-occupied with degrees of centralisation and transfers of authority away from the nation-state to some supra-national structure. It avoids specifying a structural blueprint, instead positing incremental structural integration based on a convergence of interests over time.⁶⁴ The central assumption here is that a co-ordination of man's individual welfare needs will gradually direct man's loyalties away from the nation state and towards functional international organisations.

⁶² For a treatise on Functionalism. See David Mitrany. A Working Peace System. London: The Royal Institute of International Affairs, 1943.

⁶³ Jeggan, Senghor. "Theoretical Foundations of Regional Integration In Africa: An Overview", in P. Anyang' Nyong'o (ed). Regional Integration in Africa: Unfinished Agenda, op. cit. pp.17-31. p.19.

⁶⁴ Ibid.

Both functionalist approaches stress the dominance of economic and political variables. In terms politics, successful integration is seen to be dependent primarily on the will and determination of political elites to seek positive outcomes. In terms of economic variables, the economy and technology are viewed as generating demands and pressures on existing political institutions and decision makers to compel them to adopt more creative policies and bargaining skills, which rapidly lead to an integrated community. Progress in international and social co-operation is believed to be a prerequisite for the elimination of political conflicts and war.

Neo-functionalism on the other hand represents a reformulation of functionalism in several ways in response to the integrative experiences in Western Europe and other areas. In common with functionalism, neo-functionalism accepts the determining nature of the economic, social and technological environment. It emphasises economic welfare and technological co-operation; stresses on utilitarian factors in community building and a belief in a liberal pluralistic setting in participating political units; and finally, it accords a pivotal role in the integrative process to technocrats.

Neo-functionalist thinking has several distinctive features. First, is the importance attached to the role of loyalty in the integration process. Loyalty here is seen in a two-fold manner. Loyalty can either be a result of certain political and cultural homogeneity, which provides the basis for integration, or is itself the product of successful transnational institutions. Loyalty in turn becomes a means for avoiding conflicts and war.

The second feature is the concept of 'spillover'. Central to the idea of spillover was the belief that functions co-operatively performed by government in one area spurs co-operation in other areas leading eventually to integration. Spillover flows from a functionally specific economic area to a more diffuse, controversial and more politically sensitive area. Initially spill-over from the economic sector to the political one was assumed to be automatic, but the lack of consensus in Western Europe concerning political integration has resulted in the modification of the theory to account for this. With respect to Western European integration, Haas saw spillover not as a manifestation of enthusiasm for the ideology of Europe but as a more prosaic result of "swapping concessions from a variety of sectors." He opined:

Lack of agreement among governments can give rise to increased delegated powers on the part of these (supranational) institutions. Dissatisfaction with the partial results of economic steps may lead labour and industry to demand new central action. Supranational and national groups may create situations that can be dealt with only through central action, unless the nations are willing to suffer deprivations in welfare... no statesman, even if he deeply dislikes the process, can permanently isolate his nation from a commitment to unity, which is only partially implemented, unless he is willing to pay the price in diminished welfare.⁶⁵

Thirdly, neo-functionalism makes an attempt to identify universal variables necessary for the success of the integration process. Some of the variables cited include industrialised economies involved in high levels of international trade; politically mobilised masses competing within a pluralistic political system marked by vibrant political parties; organised interest groups led by identifiable elite; structured relations between the elites and the masses governed by a parliamentary democracy.

Many authorities have criticized functionalism on various counts. Sewell sees as the greatest deficiency of the functional strategy its inadequate consideration of the nature and operation of politics⁶⁶. On the same score, Puchala observes that functionalism preoccupies itself with the creation of co-operation and integration among nations without giving any meaning role in the process to politics:

The functionalist asks how men may achieve international co-operation by circumventing politics among nations. But he has not asked how international is in fact achieved in the very course of international politics⁶⁷.

On the role of special interests and technocrats as vanguards of the functionalist strategy, Nye has characterised functionalism as 'a strategy for attacking the castle of national sovereignty by stealth, with interest groups as mercenaries and technocrats as

⁶⁵ Ernest Haas. The Uniting of Europe. London: Steven and Sons. 1958. p. 243. See also Joseph S. Nye. "Comparing Common Markets: A Revised Neo-functional Model". in Lindberg and Scheingold. Regional Integration. op. cit. p.200.

⁶⁶ Sewell Patrick. Functionalism and World Politics. Princeton: Princeton University Press. 1966. p.43.

⁶⁷ Puchala, D. "Of Blind Men, Elephants and International Integration", Journal of Common Market Studies. Vol. 10, No. 3, 1972. pp.238-309. p.275.

agents within the walls to gently open the gates⁶⁸. Despite these criticisms, functionalism and neo-functionalism combine to offer sufficient explanatory power and therefore provide a sound theoretical basis for this study.

⁶⁸ Nye, Joseph S. "Central American Regional Integration", p.11.

CHAPTER TWO

THE EVOLUTION OF EAST AFRICAN CO-OPERATION, 1993-1999

2.1 Introduction

The re-invention of East African co-operation in the 1990s has its roots in the East African Mediation Agreement⁶⁹ signed on 14th May 1984 by Kenya, Uganda and Tanzania on the dissolution of the defunct East African Community. The main object of the Mediation Agreement was the division of the assets and liabilities of the former community. Yet even as the Community was collapsing the spirit to derive strength and benefits for the citizens of the three East African states from unity and common action was not thrown out of the window altogether. Indeed, Article 14.02 of the Mediation Agreement embodies an acceptance on the part of the three partner states to explore and identify areas for future co-operation and make the necessary arrangements to make good such co-operation.

Outside the provisions of the Mediation Agreement, July 15th 1986 represents a landmark date when the heads of state of Kenya, Uganda and Tanzania began to make conscious efforts to resuscitate East African co-operation. During a summit held in Nairobi, Presidents Daniel Arap Moi of Republic of Kenya, Yoweri Museveni of the Republic Uganda and Ali Hassan Mwinyi of the United Republic of Tanzania 'agreed (in principle) to establish a follow-up mechanism for East African regional co-operation'.⁷⁰ After this, there was a lull of activity which may partly be attributed to the instabilities then prevalent in the Uganda until November 22nd, 1991 when a heads of state summit again held in Nairobi agreed to establish, *inter alia*, a framework for the establishment of a Permanent Tripartite Commission for East African co-operation. It was not until late 1993 that the Permanent Tripartite Commission was established on

⁶⁹ See Preamble, The Treaty for the Establishment of the East African Community, The EAC Secretariat, Arusha, 1999.

⁷⁰ See Preamble, Agreement for the Commission for East African Co-operation, Secretariat of the Commission for East African Co-operation, Arusha, 1993.

the signing of the Agreement for the Establishment of the Permanent Tripartite Commission for Co-operation between the Republic of Kenya, the Republic of Uganda and the United Republic of Tanzania.

This chapter outlines the chronology of events that led to the establishment of the current East African Community (EAC). It examines the co-operation years critically, assessing the various institutions that were put in place to deepen co-operation, the treaty making process and the debates leading to the eventual signing of the Treaty for the Establishment of the East African Community in November 1999.

2.2 The Permanent Tripartite Commission for East African Co-operation

The Permanent Tripartite Commission for Co-operation between the Republic of Kenya, the Republic of Uganda and the United Republic of Tanzania was established on November 30, 1999. Its primary responsibilities were to promote co-operation in various fields including political; economic; socio-cultural; and security among the states for their mutual benefit.⁷¹ The Tripartite Commission was also charged with the responsibilities of initiating, planning and implementing tripartite programmes of co-operation in order to encourage and promote the mutual development of the three states; instituting studies and research leading to the determination of the most appropriate form and type of co-operation to be established; to propose to the governments of the member states agreements that are necessary for effective co-operation; implementation of the Agreement establishing the Permanent Tripartite Commission; and to review any agreements and make recommendations to the governments of the member states from time to time in the light of new needs arising.⁷²

In terms of composition, the Tripartite Commission was to be headed by ministers responsible for regional co-operation and was to include other sectoral ministers.⁷³

⁷¹ Ibid. Article 1.00. See also Preamble. Treaty for the Establishment of the East African Community, op. cit.

⁷² Ibid. Article 3.

⁷³ Ibid. Article 2.01.

Since the ultimate objective of East African co-operation is the establishment of a political federation via a customs union, a common market and a monetary union as transition stages⁷⁴, it is envisaged that the sectoral ministries mentioned to constitute the Tripartite Commission would include those responsible for finance, planning, tourism, infrastructural development, health, security, defence, trade, industry, and environmental management. These are sectors where joint action will be required early. In the discharge of its responsibilities, the Tripartite Commission was empowered to set up sub-committees or committees as the need arose to deal with the various areas of co-operation.

There were two approaches in institutionalising East African co-operation amongst the three countries. New separate ministries have been created to handle the docket of regional co-operation, or in other cases it has been placed in various existing ministries. In Kenya for instance, it began as a department in the ministry of Foreign Affairs; then it became a full-fledged ministry under a minister of state in the Office of the President; and currently it is under the ministry of Tourism, Trade and Industry. In Uganda, regional co-operation has been placed under a designated minister of state under the Minister of Foreign Affairs, while in Tanzania, regional co-operation has been and is in the docket of the ministry Foreign Affairs. This lack of uniformity in the establishment of structures to handle East African co-operation at the intergovernmental level has serious ramifications on the management of the affairs of the budding co-operation. These diverse approaches encourage disco-ordination and lack of follow-up mechanisms on co-operation business for want of clear established institutional structures to do the same. It is therefore necessary for these approaches to be harmonized if further co-operation and development is to be ascertained.

With respect to the meetings of the Tripartite Commission, the Agreement set out that it was to hold its meetings at least three times a year and extra-ordinary meetings as the need arose⁷⁵. These meetings were to be held in rotation in the three states and the Tripartite Commission was to determine its own rules of procedure during the

⁷⁴Ibid. Article 5.2, Treaty for the Establishment of the East African Community. op. cit.

⁷⁵ Article 4.01, Agreement for the Commission for East African Co-operation. op. cit.

meetings. It also provided that except for its first meeting, the Tripartite Commission meetings were to be preceded by a meeting of the Co-ordination Committee of Officials that was to be established subject to Article 7.01 of the Agreement. The meetings of the Tripartite Commission were to be chaired by a chairman who had to be a minister in charge of regional co-operation of any of the partner states. The chairmanship was rotational and had a fixed tenure of the office of twelve months⁷⁶.

The chairman was vested with several responsibilities. These included; the co-ordination of the activities of the Tripartite Commission during the term of office with the assistance of the Co-ordination Committee of officials; providing a secretariat to keep records of all meetings and documents of the Tripartite Commission, and disseminating information amongst the member states; monitoring and following up progress of activities of regional projects; making appropriate arrangements for Tripartite Commission meetings; assisting in mobilizing funds and working out financial arrangements including contributions by member states for regional projects; ensuring the existence of effective implementation machinery for regional projects; and informing other development partners like donors of relevant developments in the region⁷⁷.

From the foregoing, it is clear that the Tripartite Commission was the executive organ of the East African Co-operation before the eventual establishment of the Secretariat. It had responsibility to promptly work policy directions provided by the Summit of heads of state into coherent programmes for implementation to foster deepened co-operation amongst the three countries. In comparison to the Council of Ministers of the defunct East African Community, it appears that the Tripartite Commission was vested with wider powers to drive co-operation in the region forward. This shift is perhaps informed by the experiences of the former Community where most of the decision-making was placed in the hands of the heads of state through the instrument of the Authority with disastrous consequences. It will be

⁷⁶ Ibid. Articles 5.01 and 5.02

⁷⁷ Ibid. Article 5.03

recalled that disagreements within the Authority resulted in the breakdown of decision-making process thus accelerating the process towards eventual collapse⁷⁸.

Despite wide decisional powers vested in the Tripartite Commission it was provided that its decisions were to be by consensus and any issue that could not be agreed upon was to be referred to the Heads of State for final determination⁷⁹. This means two things. One, that decision by consensus implied a general power of veto on the part of each member state. The effect of this is that a single dissenting member has the power to overrule a majority decision and therefore a decision is only possible through unanimity. This results in a situation where the decision making process is unnecessarily hampered to the detriment of enhanced East African co-operation. Secondly, the heads of state were made to act as a court of last resort for decisions that could not attract unanimous agreement at the Tripartite Commission level. Given the view that the heads of state have to meet to make such decisions and their meetings are few, it means that important decisions could be unduly delayed. The ultimate casualty would be deepened co-operation in the region.

2.3 The Secretariat of the Permanent Tripartite Commission

On November 26 1994, provision was made by the Protocol on the Establishment of a Secretariat for the Permanent Tripartite Commission⁸⁰. While Secretarial services were earlier to be provided by the state hosting a Commission meeting, the Secretariat was established to render these services on a permanent basis. The requirement that the Permanent Tripartite Commission meet in rotation amongst the three member states meant that the Secretariat had to move from one country to another to discharge its obligations.

The establishment of the Secretariat for the Commission for East African Co-operation had several implications for the three partner states in particular and East

⁷⁸ See Hazlewood, Arthur, "Economic Instrumentalities of Statecraft and the End of the EAC" in C. Potholm and R. Fredland (eds), Integration and Disintegration in East Africa, op. cit. pp.114-147.

⁷⁹ Article 4.05, Agreement for the Commission for East African Co-operation, op. cit.

⁸⁰ Preamble, Treaty for the Establishment of the East African Community, op. cit.

African co-operation in general. For one, the Secretariat required human resources and personnel. It was agreed among the three member countries that each state was to provide a given number of qualified staff to take up positions at the Secretariat. The Republic of Kenya was to provide the Executive Secretary while the Republics of Uganda and Tanzania were to provide one Deputy Executive Secretary each, one in charge of Projects and Programmes and the other in charge of Finance and Administration. Other professional staff included economists, legal experts, information and public relations experts, auditors, planners, statisticians, accountants and librarians.⁸¹ All these personnel were to be recruited from amongst qualified East African nationals on quota basis to ensure that no one state benefited more in terms of employment opportunities for its citizens at the expense of the others. This had been one of the reasons that accelerated the collapse of the former East African Community and efforts had to be made to prevent history repeating itself.

From the signing of the Protocol, it took another two years for the Secretariat to be set up. Kenya, which was to appoint the first executive secretary initially appointed Prof. Philip Mbithi to the position. However, he turned the appointment down due to the prevailing political climate in Kenya. It was not until March 1996 that the Kenyan government found a replacement in Ambassador Francis Muthaura. With this appointment made, the other two states also filled their positions and the Secretariat was eventually staffed and began to function.

The second implication was that funds had to be made available to meet Secretariat's operational expenses. Unlike the earlier arrangement where the states alternately bore secretarial costs when hosting rotational Commission meetings, it was now clear that the costs of running the Secretariat had to be met on a collective basis. The three governments agreed on equal contributions towards the running of this organ. Taking cognisance of the experiences of the defunct East Africa Community, this arrangement was not clearly sustainable because the member states can easily paralyse the operations of the Secretariat by refusing to appropriate funds to it. A mechanism that allows it to generate its own funds would have been most useful.

⁸¹ "Secretariat Staff." EAC News. Issue 1. August 1998. p.7.

The last implication was that once the Secretariat was established, the three governments had to find a permanent place for its operations. It was easily agreed that the Secretariat was to be based at Arusha in Tanzania. This was because there was ready infrastructure left behind former Community to accommodate it. To give this effect, the Headquarters Agreement was signed between the United Republic of Tanzania and the Secretariat of the Permanent Tripartite Commission on March 14, 1996. This Agreement provided that the 'permanent Headquarters of the Secretariat shall be the Headquarters Seat and shall not be removed therefrom unless the Commission should so decide.'⁸² The government of Tanzania was also vested with responsibility to ensure that the Secretariat was not, under any circumstances, dispossessed of all or any part of the Headquarters Seat without the express consent of the Commission.

2.4 The Legal and Diplomatic Status of the Headquarters Seat

The Headquarters Seat of the Secretariat needed certain legal and diplomatic protections to operate effectively. Firstly, the Agreement provided that the Headquarters seat 'shall be inviolable.'⁸³ This meant that no government officers administrative, judicial, military, or police were at liberty to enter the Headquarters Seat to perform any official duties except with the consent and under conditions agreed upon by the Executive Secretary⁸⁴.

The appropriate authorities of state were imposed upon the responsibility to 'exercise due diligence to ensure that the peace and tranquillity of the Headquarters Seat was not disturbed by the unauthorized entry of groups of persons from outside or by disturbance in its immediate vicinity.'⁸⁵ Towards this end the Government of Tanzania, on the formal request of the Executive Secretary was to provide a sufficient

⁸²Art. II, Section 1(a), The Headquarters Agreement, East African Co-operation Secretariat, Arusha, 1996.

⁸³ Ibid. Article III, Section 1.

⁸⁴ Ibid. Article III, Section 2 (a)

⁸⁵ Ibid. Article III, Section 3 (a)

number of policemen to preserve law and order within the Headquarters seat. All these protections were not without costs. The Agreement imposed a heavy burden on the Secretariat to prevent the Headquarters Seat from becoming a refuge for persons avoiding arrest under the laws of the United Republic of Tanzania, persons required for extradition or those persons avoiding the service of legal process.⁸⁶

With respect to the status of the Headquarters Seat, the Agreement provided for its 'immunity from all forms of legal process, except insofar as in any particular case it has expressly waived its immunity'.⁸⁷ Even in cases where its immunity had to be waived, it was understood that such waiver of immunity could not extend to any measure of execution. Immunity was also extended to the property and assets of the Secretariat. These were to be immune from search, requisition, confiscation, expropriation and any judicial or legislative action⁸⁸. The archives of the Secretariat, and in general all documents belonging to it or held by it 'wherever located' were inviolable.⁸⁹ Like the Headquarters Seat itself, this meant that the archives and documents of the Secretariat were not subject to the jurisdiction of the authorities of the Government of the Republic of Tanzania.

The Secretariat's property, assets, income and transactions were also exempt from all direct taxation including sales tax, customs duties and prohibitions, and from restrictions on imports and exports in respect of articles for the official use of the Secretariat⁹⁰. This exemption extended to any obligations related to the payment, withholding or collection of any tax or duty. With respect to other financial matters, the Secretariat was allowed to hold funds and operate accounts in any currency of its choice with unfettered freedoms to transfer such funds from one country to another.⁹¹

⁸⁶ Ibid. Article III, Section 2 (b)

⁸⁷ Ibid. Article IV, Section 1 (a)

⁸⁸ Ibid. Article IV, Section 1 (b)

⁸⁹ Ibid. Article IV, Section 1 (c)

⁹⁰ Ibid. Article IV, Section 1 (d)

⁹¹ Ibid. Article IV, Section 1 (e)

This was to ensure that the Secretariat could be able to transact its businesses with agents within or without the East African region without undue interference.

The Agreement extended inviolability to the Secretariat's official communications. It was, in addition, provided that the Secretariat's official communications were to enjoy treatment not less favourable than that accorded by the Government of Tanzania to international organizations and foreign diplomatic missions resident in the state⁹². Consequently, the Secretariat's official correspondence or other communication was to be free from censure. This immunity also covered its official publications, documents, visual aids, still and moving pictures, films, sound recordings or other scientific recordings for the Secretariat's work⁹³. It was also given the right to use codes, dispatch and receive official correspondence either by courier or sealed bags which enjoy the same privileges and immunities like those of diplomatic couriers and bags.⁹⁴ The effect is that all communications are protected from any kinds of tamper by the state.

The staff of the Secretariat also needed certain rights and protections to be able to discharge their responsibilities effectively and efficiently. In this regard, the Agreement extended various rights and immunities to various levels of Secretariat staff. To begin with, the appropriate authorities were to grant the right of entry, sojourn in, transit through and exit from the territory of the United Republic of Tanzania to members of staff of the Secretariat and their families, and consultants employed by the Secretariat when such transit or exit was necessary for the proper performance of their functions⁹⁵. The Executive Secretary was to communicate to the Government the names of all persons to enjoy this right and these same beneficiaries were under obligation to produce satisfactory proof that they were entitled to this right. By virtue of this provision, Secretariat staff and employees were given the right of movement into and out of the Republic of Tanzania.

⁹² Ibid. Article V, Section 1

⁹³ Ibid. Article V, Section 2 (a)

⁹⁴ Ibid. Article V, Section 2 (b)

⁹⁵ Ibid. Article VI, Section 1 (a) (iii), (iv)

Various immunities were extended to the staff of the Secretariat to be able to perform their functions effectively. At work, they were to be immune from legal process in respect of words spoken or written and all acts performed in the course of duty⁹⁶. This precluded the possibility of Secretariat staff being sued in courts of law as a consequence of their actions in discharge of their responsibilities. Also together with their members of the family forming part of the household, they enjoyed immunity from immigration restrictions, alien registration, and national service obligations and the same repatriation facilities in time of crisis as staff of other international organizations of equivalent cadre⁹⁷. The latter is to ensure that the staff is assured of safe passage out of Tanzania in the event of any upheaval or turmoil.

With respect to staff possessions, their personal and official baggage enjoyed immunity from inspection and seizure. This was to hold unless there were serious grounds for presuming that they may contain prohibited and unlawful articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the United Republic of Tanzania⁹⁸. Where such inspection was necessary, it had to be done in the presence of the officer in question or an authorized representative. It is however expected that the staff would be law abiding and hence obviate such measures. The staff further enjoyed the right to purchase ex-bond or import free of duty their furniture, effects and articles for personal use or for use of their members of family forming part of the household.⁹⁹ This facility is especially useful when establishing and was subject to provision that such articles so imported were not sold or disposed of except with the agreement and in conformity with conditions set by the Government of Tanzania.

On matters of staff finances, they enjoyed exemption from taxation in respect of salaries and emoluments paid to them by the Secretariat¹⁰⁰. Attendant with this they

⁹⁶ Ibid. Article VII, 1 (a).

⁹⁷ Ibid. Article VII, 1 (d). (f)

⁹⁸ Ibid. Article VII, 1 (b).

⁹⁹ Ibid. Article VII, 1 (g)

¹⁰⁰ Ibid. Article VII, 1 (C)

were accorded privileges in respect of exchange control facilities comparable to officials of comparable rank of international organization.¹⁰¹ This was to ease personal financial transactions and money transfers.

These immunities and privileges were accorded to various categories of members of staff. The Executive Secretary, the Deputy Executive Secretaries, professional staff and other officials of comparable rank were to enjoy all these immunities, privileges, exemptions and facilities as accorded to representatives of comparable rank of international organizations. There were exceptions however. Tanzanian nationals employed as professional staff were only granted functional immunities and also exempted from payment of customs duties on their imports in accordance with the provisions of section 15(b) of the Diplomatic and Consular Immunities and Privileges Act No. 5 of 1986. Tanzanian members of the general staff on the other hand were granted functional immunities but also required to pay income tax on such part of their salaries that is equivalent to their earlier salaries prior to taking up employment with the Secretariat in accordance with section 16(a) and (b) of the Diplomatic and Consular Immunities and Privileges Act No. 5 of 1986.¹⁰²

2.5 The Treaty Making Process

In April 29, 1997 the Heads of State after reviewing the progress made by the Permanent Tripartite Commission in the development of closer co-operation between the three countries of Kenya, Uganda and Tanzania in the fiscal, monetary, immigration, infrastructure and service fields, and after approving the East African Co-operation Development Strategy 1997-2000, directed the Permanent Tripartite Commission to embark on negotiations to upgrade the Agreement establishing the Tripartite Commission into a Treaty.¹⁰³ After long and tenuous deliberations by various teams of experts and representatives of the three member states, a draft treaty was ready for presentation to the Commission on 30th April 1998 for consideration.

¹⁰¹ Ibid. Article VII. Section 1 (c)

¹⁰² Ibid. Article VII. Section 2 (c), 3 (b).

¹⁰³ Preamble. Treaty for the Establishment of the East African Community, op. cit.

The Draft Treaty gave as the main objective of East African co-operation the deepening of co-operation amongst the three East African countries through the development of policies and programmes in the various fields for their mutual benefit with a view to achieving economic, social and political integration.¹⁰⁴ Other areas in which co-operation was envisaged included defence, security, political, legal and judicial affairs. Article 2 of the Draft Treaty proposed the establishment of an East African Community in stages starting with customs union, a common market, and then a monetary union. The ultimate objective of the community was the establishment of a political federation. Political federation still remains the long-term objective of East African co-operation. The promotion of balanced and equitable development aimed at raising the standards of living of the people of East African was identified as a major step towards achieving the overall goals.

With respect to the common market, free movement of persons, goods and capital through the removal of internal customs tariffs and quota restrictions; maintenance of macro-economic stability to ensure convertibility of the three state currencies leading to a monetary union; development of regional infrastructure; achievement of food security through increased agricultural production; efficient management and utilization of natural resources; promotion of quality tourism and wildlife management and co-operation in investments and industrial development were provided for.¹⁰⁵ Other issues that were tied to the effective operation of the common market included standardization of industrial goods; harmonization of legal training and licensing of cross-border legal practice; enhancement of the role of women in socio-economic development; and effective participation of the private sector and civil society in the operations of the common market.

For the proper and effective implementation of these provisions, the Draft Treaty proposed the following institutions: the Summit, the Council, the Legislative Assembly, the Court, and the Secretariat. The Summit was supreme authority of the supposed

¹⁰⁴ Report of the Workshop on the Draft Treaty of the East African Community, held at the Kenya School of Monetary Studies, Nairobi. 24th-25th Sept. 1998. Nairobi. government Printer. p.5.

¹⁰⁵ See "Draft Treaty for East African Community Goes for Public Debate." EAC News. Issue 1, August 1998. p.5.

community and comprised the three heads of state. It was charged with the responsibility 'to give general directions and impetus as to the development and achievement of the objectives of the Community.'¹⁰⁶ The Council of Ministers was to be the main policy organ of the community. It was charged with the responsibility of assisting the Summit in the performance of its functions; approval of the budget and formulation of administration and financial regulations; to promote, monitor and keep under constant review the development of the community; to make legally binding regulations, issue directives, take decisions and make recommendations with respect to the smooth functioning of the businesses of the community. The Co-ordination Committee helped the Council and was made up of permanent secretaries responsible for regional cooperation. An East African Court was proposed with competence 'to accept and adjudicate upon all matters pursuant to the Treaty.' An EAC Assembly was also proposed to 'enact measures to which legislative effect may be given in the three states.'¹⁰⁷ The legislative mandate of the Assembly was intended to be limited to matters of relevance to the community so as not to run parallel to national parliaments. Lastly, the Draft Treaty lastly established the Secretariat to act as the principle executive organ of the community. It was to be headed by the Secretary-General and assisted by two Deputy Secretaries-General.

On the presentation of the Draft Treaty to the Commission on 30 April 1998, it was decided that it be subjected to wide publicity and debate to give the people of East Africa an opportunity to make contributions into the treaty-making process. The exercise was allocated three months with effect from 20th May 1998 and the signing of the treaty by the Summit was put at the end of November 1998. During these public debates, it was expected that the views of the people of East Africa were to be worked into proposals to be forwarded to the treaty-making experts for inclusion into the final document. At the end of the process, it was hoped that the East African would achieve its declared objective of having a people-led co-operation based on a people's treaty.¹⁰⁸

¹⁰⁶ Article 10.1. Draft Treaty for the Establishment of the East African Community. EAC Secretariat. Arusha, 1999.

¹⁰⁷ Article 57. Draft Treaty for the EAC, op. cit.

¹⁰⁸ Ibid. Preamble.

The target for the signing of the Treaty at the end of November 1998 was never to be met, and the goal posts were shifted to 30th July 1999.

As debate raged on, the main question remained that of what the practical benefits of the new East African Community will prove to be and whether three or more of the world's poorest countries would be able to emulate the immense successes of the European Union (EU) with some of the richest states. A study by D M Hanink and J H Owusu on the Economic Community of West African States (ECOWAS) has demonstrated that when an economic bloc contained states whose citizens have little purchasing power trade stagnates.¹⁰⁹ The East African case is seen to be closer to the ECOWAS model than the EU one and therefore there were uncertainties about the benefits that the Community might give the people of East Africa and if it will take off in the first place.

Consequently, as the deadline of July 30 1999 neared, the three partner states were no nearer to signing the treaty than they were in November 1998. There was again another postponement of the treaty signing occasioned by disagreements that arose from Tanzania's reservations over trade provisions especially with respect to the proposed zero tariff trade regime. Commenting on the anticipated inability to meet the deadline, Ambassador Francis Muthaura, the then Executive Secretary of the East African Co-operation had observed:

"The programme up to now for the signing has been the 30th of this month (July, 1999) but definitely there are issues that still need to be sorted out, in which case the deadline may not be met... The problem arises basically on the trade regime. In the other areas, there are no conflicts at all. Where we are talking about infrastructural development or sectoral priorities, there is almost no problem. The only problem is on the issue of trade."¹¹⁰

According to a July 15 1999 EAC report fourteen issues remained unresolved and these were presumed to be part of the matters holding the signing of the treaty. These were; the title of the Treaty; the number of members of the East African Assembly;

¹⁰⁹ Clive Mutiso. "Vital Lessons from Success and Failure of Economic Blocs." The East African. July 26-August 1, 1999, p.4.

¹¹⁰ See Joint Report. "EAC Pact Likely to be Postponed over Trade Rift." The East African. July 19-25, 1999, p.1.

relations between the Regional Assembly and National Assemblies of member states; renewal of the tenure of the Executive Secretary; the establishment of the customs union; date for the cessation of imposition of new tariffs; the period relating to claims for duty draw-back; right of establishment under the common market; easing and granting of air traffic rights; free movement of persons, labour and capital; right of establishment and residence within the Community; establishment of a political federation; legal and judicial affairs; and the source of the budget of the EAC.¹¹¹ It was clear that unless these matters were satisfactorily resolved there was going to be little progress.

In a sense, the Tanzanian position was reminiscent of the strong suspicions that characterized relations amongst the member states that led to the collapse of the former EAC. Then, like in this new initiative, Tanzania favoured a 'step by step' approach to the integration process. The rationale here was that every opportunity that would result in the replication of past mistakes had to be avoided at all costs. Indeed, a Tanzanian official had observed "the first step must be to agree on a framework of the Treaty that identified areas of co-operation, thereafter negotiate one area after another and sign individual protocols accordingly."¹¹² This essentially led to the debate as to whether the heads of state should sign the document which would have been little more than a declaration of intent leaving the thorny issues that were bogging down the process like trade provisions and tariffs to be agreed upon later. While Uganda stood with Tanzania on this position, Kenya strongly opposed it instead favouring a delay until more of the contentious details had been agreed upon.

Another thorny issue that Tanzania was uncomfortable with was that in regard to balance of trade, which the Draft Treaty was silent about. Statistics from the Bank of Tanzania¹¹³ had indicated that Tanzania's volume of trade for the year 1998 had placed Kenya sixth in volume and value of trade after India, which was leading, United

¹¹¹ See Mwakisyala James, "EA Stumbles on its First Step to Integration," The East African, July 26 – August 1 1999. p.4.

¹¹² Ibid.

¹¹³ Central Bank of Tanzania Economic Survey Report. Dar es Salaam. June 1998.

Kingdom, Japan, South Africa and the Netherlands. Tanzania therefore needed a suitable framework to correct this trade imbalance written into the treaty. This has historical significance. Trade imbalances amongst the three member states with Kenya seen as reaping more benefits at the expense of Uganda and Tanzania was one of the main issues that accelerated the collapse of the former EAC. Tanzania also found certain provisions of the Draft Treaty to contain unacceptable clauses with regard to tourism, labour movement and the general access to natural resources. These it insisted had to be negotiated further to eliminate any loopholes through which, especially Kenyan business would unfairly exploit Tanzanian and Ugandan markets. The high levels of corruption in Kenya and amongst Kenyan business were also an area of great concern. About the latter a Tanzanian official observed, "we would have a situation of land grabbing by Kenyans here in no time if we allow the Treaty in its present form."¹¹⁴ This was in reference to the rampant corruption that had seen majority of public land grabbed, public enterprises ruined, and other public resources looted by officialdom and well connected individuals in Kenya. Indeed Tanzania was expressing fears that this disease may very easily spread to their country if certain safeguards were not enshrined in the treaty.

Opposition to the establishment of a common market immediately stemmed from the imposition of common internal and external tariffs that this was to entail. It was feared that this would have favoured Kenya as the more industrially established partner a situation that is consistent with the experiences of the former EAC. The result would be that Kenyan products would swamp the markets of the other two member states destroying their infantile industries. This was clearly unacceptable and therefore Tanzania was here demanding a mechanism that will redistribute the benefits of trade in the common market while ensuring that the losses in terms of customs levies for their government were also cushioned and their young industries appropriately protected. Another Tanzanian criticism of the Draft Treaty was that it emphasized trade at the expense of basic developmental issues like infrastructure: "Tanzania [was] instead

¹¹⁴ Mwakisyala James. "EA Stumbles on its First Step to Integration." The East African. July 26 – August 1 1999. p.4.

proposing the principle of asymmetry that accommodates variations. We object to a common market that only provides for uniform rules and tariffs.”¹¹⁵

As was to be expected, the Treaty could not be signed. A new date was set for the November 30th 1999, and meanwhile the representatives of the member states and treaty experts continued on working round the clock to narrow the differences that existed and also make some of the changes to the Draft Treaty that had emerged as necessary. But even as the heads of state were signing the Treaty on this day, most of the contentious issues enumerated earlier were left out of the final draft. These were to be negotiated in stages and respective protocols signed as the treaty was being implemented.¹¹⁶ Tanzania’s position would seem to have won the day yet it also shows succinctly that the ghosts of the old EAC might return to haunt the current initiative.

In summary, this chapter has provided an analysis of the co-operation years clearly bringing out the chronology of events that led to the eventual establishment of the East African Community in November 1999. It further provides an insight into the institution building process and the debates that animated the treaty making process. The main decision making institutions during the co-operation years were the Summit of the heads of state, the Permanent Tripartite Commission for East African Co-operation and the Secretariat of the Permanent Tripartite Commission for East African Co-operation. The treaty making process followed a long and tenuous path that began with a Draft Treaty. This was exposed to wide publicity and debate to give the people of East Africa an opportunity to participate in the treaty making process. Deadlines for the signing of the treaty could not be met because of disagreements amongst the member states with respect to the institutionalisation of the supposed community and provisions related to trade.

¹¹⁵ Ibid.

¹¹⁶ Mike Ngwalla. “Concern as Treaty is Signed.” Daily Nation. November 30 1999. p.2.

CHAPTER THREE

INSTITUTION BUILDING AND DECISION MAKING

3.1 Introduction

'Form follows function'¹¹⁷ is a basic and fundamental functionalist principle. The idea is that institutions or organs are moulded according to the functions they are intended to perform. In the specific case of regional co-operation arrangements, the established institutions must be equipped with the proper structural and procedural capacity to drive co-operation further:

Functions are linked together in a network of organisations each of which is structured to cater for particular needs. The organisational system as a whole is expected to be responsive to the changing nature of these functions.¹¹⁸

While the creation and establishment of vibrant institutions has acted as a catalyst and engine to drive co-operation further particularly in Western Europe, the experience in Africa sadly continues to tell a totally different story. The overbearing role that politics has continued to play and the personalization of political power by African leaders have effectively ensured that institutions of regional co-operation have for long remained feeble, lacking the necessary autonomy and initiative to further the objectives of co-operation. Senghor has attributed this indolence to flawed conceptions on the part of regional co-operation organisations in Africa:

In the African experience, the institutions for sub-regional co-operation suffer from many weaknesses, which considerably limit their effectiveness. If even all the other varied preconditions for the functional strategy to run its course existed, the inadequacies of the organisations established to promote the strategy would have ensured that little progress would be achieved.¹¹⁹

¹¹⁷ Mitrany, David. A Working Peace System. London: Royal Institute of International Affairs 1965. See also Mitrany, D. "The Prospect of Integration: Federal or Functional?" Journal of Common Market Studies, 4, 1965-6, pp. 119-49.

¹¹⁸ Jeggan C. Senghor, "Theoretical Foundations of Regional Integration in Africa: An overview." in P. Anyang' Nyong'o (ed), Regional Integration in Africa: Unfinished Agenda. Nairobi: Academy Science Publishers, 1990, pp.17-34, p. 27.

¹¹⁹ Ibid

Given this state of affairs, this study argues that the general failure of regional co-operation efforts in Africa has been mainly the result of the contracting states not giving the institutions of co-operation *carte blanche* to be able to function and discharge their mandates effectively. This has been because of the general lack of political will to see these ventures succeed since each state is more concerned with satisfying its national interests and domestic imperatives.

The Treaty for the Establishment of the East African Community (EAC) signed on November 30, 1999, establishes as organs of the Community; the Summit, the Council, the Co-ordination Committee, Sectoral Committees, the East African Legislative Assembly, the East African Court of Justice, the Secretariat.¹²⁰ It also provides that on entry into force of the Treaty, the remnant institutions of the former EAC such as the East African Development Bank and the Lake Victoria Fisheries Organisation shall be deemed institutions of the Community and function as such. This chapter seeks to analyse these institutions and decision-making organs to establish whether they enjoy the requisite capacity to face the challenges of greater East African co-operation and hence result in the success of the new East African Community. Therefore a keen eye will be trained at their strengths, weakness and institutional innovations.

3.2 The Summit

The Summit is established by Article 9.1(a) of the Treaty as an organ of the Community. It consists of the Heads of State or Government of the Republic of Kenya, the Republic of Uganda and the United Republic of Tanzania. It is further provided that a Minister of Government may be appointed to attend a Summit meeting after consultations with other members of the Summit, on behalf of a Summit member who is unable to attend for one reason or another provided that such a Minister shall have full powers, duties and responsibilities of the member of the Summit for whom he is

¹²⁰ Article 9.1, The Treaty for the Establishment of the EAC, EAC Secretariat, Arusha, 1999.

acting.¹²¹ In this respect, the person so appointed becomes a member of the Summit for the purposes of that specific meeting only.

The purpose of this provision is to ensure that at no time should the business of the Community be held ransom due to a member's inability to attend a Summit meeting. This has a historical basis. It will be recalled that a major factor that led to the collapse of the old East African Community was the unwillingness of the members of the East African Authority, which was incidentally the supreme decision-making organ, to convene a meeting to review policies and the progress of the Community. This was a result of the extreme hostilities that existed between Tanzania and Uganda after the overthrow of President Milton Obote by Idi Amin in 1971. The thaw in the relationship between the two countries climaxed with the Tanzanian invasion of Uganda, which ended in the deposition of Idi Amin in 1979¹²². According to the Treaty of the East African Co-operation (1967) there was no provision for any official to attend an Authority meeting on behalf of a president who for one reason or another was unavailable. The effect of this was that non-decision making was encouraged as important matters had to wait until all members were available and willing to meet. Therefore the provision represents an important innovation designed to ensure that community business ran smoothly and promptly.

The Summit can be compared to a 'federal president'. The vesting of authority in several individuals has been tried before and one could easily argue that it is a good process towards closer union - a sort of training step for eventual union. Some authorities have argued that the Community is a quasi-confederation and therefore the Summit can serve its purpose.¹²³ But even as a loose political union, the Summit can be very problematic. In the first place, in practice a president does not disagree with himself, but the Summit can because it is made up of different individuals who may not

¹²¹ Ibid. Article 10

¹²² See Olatunde Ojo. "Regional Co-operation and Integration" in Ojo et al. African International Relations. London: Longman, 1985. pp.142-181. p.167. See also Hazlewood, A. Economic Integration: The East African Experience. London: Oxford University Press, 1967.

¹²³ E. F. Ssempebwa. "The Community's Institutions as Role Models for a Federal Union." in Institutional Framework for an East African Federation, EALS, Arusha, 2000. pp. 50-66. p.55.

have the same worldview and temperament. The Treaty provides that decisions of the Summit shall be by consensus.¹²⁴ A consensus of the three members of the Summit equals unanimity and therefore a veto by any of the members of Summit is implied. The workings of a federal government would be impeded by a general power of veto by any of the member states whether exercisable through a Summit-like arrangement or other.

Secondly, it would be necessary for the Summit to meet in order to make decisions. Unlike the Economic Community of West African States where the Authority of Heads of State and Government meet twice a year, the Treaty binds the Summit to meet at least once every year.¹²⁵ Though there is provision for the holding of extra-ordinary meetings at the request of any member of the Summit¹²⁶, it is argued that a meeting once per year would not be sufficient to attend to the daunting challenges of closer East African co-operation. It means that urgent decisions may inevitably be kept pending due to insufficient or even refusal to hold meetings.

Thirdly, while it is clear that the tenure of the chairperson of the Summit is one year and the office is to be held in rotation, no provision is made that compels the chairperson to convene Summit meetings. Since decision-making is tied to the convention of meetings, it is important that the Treaty clarifies this to avoid personalisation of power by any holder of the office of chairperson at the detriment of community affairs. This is not far-fetched. During the times of the former EAC, President Nyerere of Tanzania who was then the chairperson of the Authority refused to call crucial meetings of this organ on the premises that he could not sit with President Idi Amin of Uganda in the Authority. The results were disastrous for East African co-operation and it can be argued that this act immeasurably undermined the progress of the defunct EAC catalysing the process of long-term decay. The alternative

¹²⁴ Article 12.3. Treaty for the Establishment of the East African Community. op. cit.

¹²⁵ Ibid., 12.1

¹²⁶ Ibid.

as this experience showed is governance by distant communication, a process that is both slow and susceptible to misinterpretation.

Contrary to the principle of separation of powers it would appear that the Treaty accords the Summit some form of legislative function. This is implicit in Article 11.6 by which 'the Summit may delegate legislative powers', and also Article 11.8 by which 'all rules and orders made by the Summit shall be published in the Gazette and come into force on the date of publication.' This appears to conflict with Article 11.1, which reduces the functions of the Summit to giving 'general directions and impetus as to the development and achievement of the objectives of the community.' If the Summit is to exercise legislative functions, then it is left to debate whether it would not be impinging on the mandate of the East African Legislative Assembly.

The Summit exercises other important functions. These include reviewing the state of peace, security and good governance within the community; the appointment of judges to the East African Court of Justice; the admission of new members to the Community and granting observer status to foreign countries; and giving assent to Bills passed by the East African Legislative Assembly to give them the force of law¹²⁷. This wide mandate establishes the Summit as a central decision-making organ with the capacity to determine the ultimate direction East African co-operation is to take.

3.3 The Council

The Council is established under Article 9.1(b) of the Treaty for the Establishment of the East African Community. At the risk of comparing incomparables, one is tempted to treat the Council as the cabinet of the Community government. This is because it comprises of selected ministers from the governments of the contracting states. These include "ministers responsible for regional co-operation and such other ministers of the partner states as each partner state may determine."¹²⁸ In comparison, the Council of Ministers of the European Union (EU) does not have permanent membership. Instead the subject matter under discussion solely determines the membership of any Council meeting. For example if the discussions centre on

¹²⁷ Ibid. Article 11

¹²⁸ Ibid. Article 13

agriculture, then the ministers for agriculture will be in attendance. and so if it is energy. Therefore the Council meets at two levels. Meetings of foreign affairs usually considered the highest level of Council mentioned in the original treaties, are called 'General Councils' as opposed to 'Technical Councils', which involve other ministries¹²⁹. It may be useful for the East African Community to look at this arrangement afresh to see if there is anything that can be borrowed to enrich the operations of the Council.

The Council is the main policy organ of the Community.¹³⁰ It is mandated to promote and constantly review the implementation of Community programmes to ensure proper functioning and development of the Community in accordance with the Treaty. To achieve this, the Council is empowered to establish from amongst its members Sectoral Councils¹³¹ to deal with sector specific matters that require attention. In this respect, the sectoral councils are able to provide up to date inventories of sectoral priorities that need to be addressed so that the Community grows in tandem with the needs of the citizens of East Africa.

Like the Summit, one controversial function that the Treaty accords the Council is that in respect to legislative power. The Council's legislative power flows from Article 14.3(d) by which it can 'issue regulations and directives', Article 16 by which its regulations, directives and decisions have a 'binding effect on the partner states, or institutions of the Community (except the Summit, the Court of Justice and the Legislative Assembly)', and Article 14.5 by which the Council shall cause all regulations, directives and decisions made or given by it under the Treaty to be published in the Gazette; and such regulations or directives 'shall come into force on the date of publication unless otherwise provided therein.' This wide legislative mandate accorded the Council in effect could oust the jurisdiction of the Assembly,

¹²⁹ Stephen George, Politics and Policy in the European Union. New York: Oxford University Press, 1996. p.22.

¹³⁰ Article 14.1. Treaty for the Establishment of the East African Community. op. cit.

¹³¹ Ibid. Article 14.3(i)

which is the main legislative organ of the Community. Further, since its regulations and directives are not binding on the Summit, the Court of Justice and the Legislative Assembly, it is possible that these institutions can work at cross-purposes to one another causing institutional conflicts not healthy for the growth of the Community. This points to a glaring lack of coherence in Community policy-making process.

The Treaty further empowers the Council solely to 'initiate and submit Bills to the Assembly'¹³². The effect of this provision is that the operations of the Assembly are placed at the whims of the Council - a member organ of the Community Executive. Essentially then the Treaty gives the Council immense powers to control the agenda of the Assembly. This demonstrates unwillingness on the part of the Community Executive to allow other important organs of the Community to function independently for the good of the Community. Possibility exists for the Council to use this legislative initiative negatively to circumvent the operations of the Assembly. This is a situation that is completely untenable with current democratic principles that require separation of powers amongst key institutions of governance whether among nation states or regional co-operative organisations.

It is suggested that the principle of parliamentary supremacy that holds for the state parliaments should be extended to the East African Legislative Assembly if it is to grow out of the shadows of a domineering Executive to assume its rightful place as a core institution of the East African Community. This requires radical reforms to entrench the Assembly and have it enjoy an unfettered mandate to discuss and consider all issues affecting the citizens of the Community whether brought before it by private citizens, organisations or other organs of the Community. Given the Assembly's representative nature, the balance of power should tilt in its favour as opposed to the current situation where the executive wields all-pervasive powers to control its operations. The Assembly should be given leeway to set its own rules, develop its own agenda, and be free to act in the public interest.

¹³² Ibid. Article 14.1(b)

With respect to Council meetings it is provided that it should meet twice in each year¹³³ with one of them preceding a meeting of the Summit. Though provision is also made that extraordinary meetings of the Council can be held at the request of a partner state or the chairperson of the Council to address urgent matters, what has been said of the Summit is equally true of the Council. Decisions would have to await meetings. Ordinarily, a cabinet of a federal government must ideally be in continuous session if it is to discharge its responsibilities effectively, but this is not the case with the Council. This is a weakness on the part of the Council that may frustrate Community business from time to time.

Decision-making at Council just like in the Summit is by consensus and any issue that is not amenable to agreement is referred to the 'Summit for decision'.¹³⁴ Consensus, as has been argued earlier, is equal to unanimity and therefore implies a power of veto on all the contracting parties with its attendant disadvantages. To beat decisional bottlenecks associated with consensus and unanimity as a mode of decision-making, the Single European Act (SEA) introduced qualified majority at the Council of Ministers of the EU. This was in respect of legislative acts related to the single market programme and it was later extended to cover a wide range of policies including the free movement of labour, freedom of establishment, mutual recognition of qualifications, the internal market, public health, transport, competition, environment, and the implementation of the European Social Security Fund¹³⁵. Qualified majority voting operates on the basis of weighted national votes allocated on the strength of population size, with those states with the highest populations having the biggest number of votes in the system. Big nations like Britain, France and Germany lead with ten votes each while small countries like Luxembourg has two and Denmark, Finland and Ireland boast of three votes each. Though in the East African Community case a protocol on decision-making that was supposed to be negotiated within a period of six

¹³³ Ibid. Article 15.1

¹³⁴ Ibid. Article 15.3

¹³⁵ Stephen George, Politics and Policy in the European Union, op. cit. p.22.

months from the entry into force of the Treaty has not been concluded, it would perhaps be useful to borrow a leaf from the EU experience.

To assist the Council in the discharge of its responsibilities, the Treaty provides for the establishment of the Co-ordination Committee and sectoral committees. The Co-ordination Committee comprises of 'permanent secretaries responsible for regional co-operation in each partner state and such other permanent secretaries of the partner states as each partner state may determine.'¹³⁶ Its functions are to submit reports and recommendations to the Council, implementation of Council decisions and co-ordination of sectoral committees. The sectoral committees on the other hand comprise of individuals recommended to the Council by the Co-ordination Committee whose responsibilities are 'the preparation of comprehensive implementation programmes and setting out sectoral priorities'.¹³⁷

From the foregoing it is clear that the Treaty does not provide for private sector inclusion in these committees. Instead, the institutional set-up overly concentrates the initiation and implementation powers of Community programmes and policies on the hands of government bureaucrats who have the last word as to what programmes are needed and how they will be implemented. It appears that this institutional approach was transplanted from the EU where the Committee of Permanent Representatives, the Management Committee, and the Regulatory Committees play a similar role¹³⁸. Furthermore the concentration of power in the East African Community in inter-governmental hands is contrary to the principle of the 'people-centred co-operation'¹³⁹ that the Treaty advocates.

3.4 The East African Court of Justice

Article 9.1(e) of the Treaty establishes the East African Court of Justice as an organ of the Community. It is defined as a 'judicial body, which shall ensure the adherence to

¹³⁶ Article 17, Treaty for the Establishment of the East African Community, op. cit.

¹³⁷ Ibid. Article 18

¹³⁸ Stephen George, Politics and Policy in the European Union, op. cit. p.11.

¹³⁹ Article 7.1 (a), Treaty for the Establishment of the East African Community, op. cit.

law in the application and interpretation of and compliance with the Treaty.¹⁴⁰ The stated ultimate objective of East African co-operation is political federation. This is clear from Article 5.2, which declares that:

“the partner states undertake to establish among themselves and in accordance with the provisions of the Treaty; a customs union, a common market; subsequently, a monetary union, and ultimately a political federation in order to strengthen and regulate the industrial, commercial, infrastructural, cultural, social, political and other relations of the partner states...”

The political federation presupposes a democratic ‘state’ in which the rights and freedoms of the individual are well protected.

A careful study of the Treaty makes it abundantly clear that the plan in the whole co-operation scheme is that the current legal judicial systems and human rights standards amongst the three partner states will gradually wither and give way to one legal-judicial system and one human rights standard applicable to the peoples of East Africa.¹⁴¹ Articles 6,7, and 8 for instance show that the fundamental principles of the Community include good governance and adherence to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equity, and the recognition, promotion, and protection of human and peoples rights in accordance with the provisions of the African Charter on Human and People’s rights. The East African Court of Justice, while vested with initial jurisdiction over the application and interpretation of the Treaty, it is also anticipated to ‘have such other original appellate human rights and other jurisdiction as will be determined by the Council at a suitable subsequent date, and that the partner states shall conclude a protocol to operationalize the extended jurisdiction.’¹⁴²

It is clear from this provision that the Treaty rightly looks into the future and has laid the necessary foundation for the regional Court to eventually hold in its ambit wide jurisdiction to arbitrate on all matters affecting the people of East Africa. This forward-

¹⁴⁰ Ibid. Article 23

¹⁴¹ G. Kamau Kuria. “The East African Court of Justice as the Precursor of the Final Appellate Court of the Federal State of East Africa”. in Institutional Framework for an East African Federation. op.cit. pp. 35-49. p.39.

¹⁴² Article 27, Treaty for the Establishment of the EAC. op. cit.

looking provision means two things. One, it envisages a situation where the Court of Justice develops into the final appellate court in all civil and criminal matters, and having a limited original jurisdiction. It expects the enforcement of human rights in the Community to be one of the areas where common standards will require early enforcement. Therefore a situation is anticipated where national courts are given jurisdiction to enforce the Treaty in addition to their existing jurisdictions and the East African Court of Justice becomes the final appellate court. It may be cheaper to do this rather than establishing special Community courts to enforce community law with no other jurisdiction, as this will be cost-effective. In time, the Court of Justice may become the final appellate court in the Community in all civil and criminal matters and replace the Supreme Court in Uganda and the Courts of Appeal in Kenya and Tanzania.¹⁴³

Article 33 of the Treaty provides that except where jurisdiction is conferred on the Court of Justice by the Treaty, disputes to which the Community is a party are not excluded from the jurisdiction of the national courts of the partner states. The effect of this is that both the national courts and the East African Court of Justice will jointly shape the jurisprudence or legal philosophy of the Community. The same article accords its decisions on the interpretation and application of the Treaty precedence over the decisions of national courts on the same matter. The significance of this is that where the Treaty covers an issue, the constitutions of each member state, which are today the supreme law on all matters, will not be supreme law any longer. The decisions of the Court will become supreme law in the Community, and in so doing each state will in effect have ceded (part of) its sovereignty so that the federal state may emerge.¹⁴⁴

Article 34 makes provision for a national court hearing a dispute concerning the interpretation of the Treaty to request the Court to give a preliminary ruling to avoid a situation where the national courts may give conflicting decisions. While this

¹⁴³ G. Kamau Kuria. "The East African Court of Justice as the Precursor of the Final Appellate Court of the Federal State of East Africa". in Institutional Framework for an East African Federation. op. cit. pp. 35-49, p.39.

¹⁴⁴ Ibid.

superimposes the role of the Court 'to ensure adherence to the law in the interpretation and application and of compliance with the Treaty,' if this provision is properly invoked it has the effect of seeing a common jurisprudence and legal philosophy emerge faster. Article 37 requires that parties to a dispute before the Court be represented by an advocate entitled to appear before a superior court of the partner state. The effect of this provision is that all advocates in East Africa are at once turned into members of one bar for purposes of Community litigation.

Judges to the East African Court of Justice are to be appointed by the Summit from among persons recommended by the partner states who are of proven integrity, impartiality and independence, and who fulfil the conditions required in their own countries for the holding of such high judicial office, or who are jurists of recognised competence in their countries.¹⁴⁵ Each state is restricted to nominating only two judges making a total of six judges. The work of the Court is directed by a President and a Vice President both of whom must not have been recommended for appointment by the same member state. In discharge of its mandate, the Court 'shall deliver in public session, a reasoned judgement which, subject to the rules of the Court as to review, shall be final, binding, and conclusive and not open to appeal'¹⁴⁶ although in special circumstances it is allowed to deliver judgement in private. Its judgements are by majority verdict reached by the majority of the judges in private provided that a judge may deliver a dissenting judgement.¹⁴⁷ Since the independence of the Court is fundamental to its operations, the judges are accorded both immunity from all forms of prosecution and security of tenure.

3.5 The East African Legislative Assembly

The Treaty for the Establishment of the East African Community establishes the East African Legislative Assembly as the main legislative organ of the Community.¹⁴⁸ Its membership comprises twenty-seven elected members, nine from each partner state.

¹⁴⁵ Article 24.1, Treaty for the Establishment of the East African Community. op. cit.

¹⁴⁶ Ibid. Article 35.1(a)

¹⁴⁷ Ibid. Article 35.1(b)

¹⁴⁸ Ibid. Article 4 9.1

Additionally, there are five *ex-officio* members who are the three ministers responsible for regional co-operation in the respective governments of the Partner States, the Secretary-General and the Counsel to the Community.¹⁴⁹ While it can be argued that this number of members is too few to adequately represent the whole of East Africa, no explanation is given in the Treaty to show how the number was reached at. For instance, in the European Parliament seats are created on the basis of population size. The higher the population size the more the number of seats a member state will be entitled to in the European Parliament. This explains why countries like Germany, and Britain have ninety-nine and eighty-seven parliamentary seats respectively while Belgium, Greece, and Portugal have only twenty-five seats each¹⁵⁰. The problem with the East African Legislative Assembly is that there seems to have been a lot of concern for equal national representation that important factors like population size were thrown to the back burner. This will clearly result in severe under-representation of the Community constituents.

In examining the East African Legislative Assembly as a forerunner of a parliament for the envisaged federation of the three East African states, it will be critical to observe whether it meets objective criteria for an independent and responsive institution that will further the aims of co-operation in the Community. For instance certain attributes like protection of human rights, upholding the rule of law, and respect of principles of democracy remain enduring hallmarks of any new era legislature. The regional Assembly cannot escape the expectation that it equally stands up to these principles. To be able to do this, a number of factors must be in play.

Firstly, a responsive and representative legislature should constitute of democratically elected members - individuals at the service of an electorate from whom they derive their mandate and to whom they owe responsibilities. This is currently a popular principle as the world strives to uproot the last vestiges of authoritarianism, dictatorship, and autarky. Even where the legislature is bicameral - constituting of higher and lower houses - it is expected that the most effective house for purposes of

¹⁴⁹ Ibid. Article 48.1.

¹⁵⁰ Stephen George. Politics and Policy in the European Union. op. cit. p.24.

legislation must be that which is most democratically elected of the two. Further, the holding of democratic elections ensures that the members of the legislature owe their allegiance to the voters and not to any other surrogate authorities. Consequently, the members of the legislature will always be responsive to the needs of their electorates knowing that failure to deliver would surely result in being denied a new mandate when elections are called. This obviously will introduce very healthy competition amongst candidates vying for seats in the East African Legislative Assembly, which would direct the election campaigns towards issue-oriented politics. The ultimate beneficiaries of such a dispensation will be the people of Community.

The East African Legislative Assembly fails on this score. Instead of its members being popularly elected by common suffrage, the Treaty provides for indirect elections through nomination by the respective National Assemblies of the member states. While there is provision that the members so elected 'shall represent as much as it is feasible the various political parties, shades of opinion, gender, and other interest groups in that partner state,'¹⁵¹ it is submitted that this can never adequately be a substitute for a popular and direct election. National assemblies at times may not fully represent the needs and wishes of the citizens, and given the kind of vested interests that leaders have it cannot be altogether ruled out that the national assemblies may end up electing to the East African Legislative Assembly people who for all intents and purposes will never be useful to the Community. It is therefore of paramount importance that the people of East Africa are given the opportunity to elect the leaders that they want to this crucial Community organ. Furthermore, this will give the members of the Assembly both legitimacy and initiative to execute their responsibilities in the public interest without fear of being disavowed by the nominating leaders, parties and other authorities within their respective home states.

Secondly, in conformity with the principle of separation of powers it is a requirement that any legislature be independent from the other arms of the co-operation government, *vide* the executive and the judiciary. In the case of the East African Legislative Assembly, its independence from the Community executive (the Summit and the Council) should be ascertained. Its apparent lack of independence

¹⁵¹ Article 50.1. Treaty for the Establishment of the East African Community, *op. cit.*

appears to begin with the fact that it is the Council (one of the executive organs of the Community government) that is solely vested with the power to 'initiate and submit bills to the Assembly.'¹⁵² The vesting of power to initiate and submit bills to the Assembly in the Council in effect means that the Council is given control over the agenda of the Assembly. As has been observed elsewhere, if the Council uses these powers negatively it can retrench the Assembly by sabotaging its operations through refusal to initiate and submit bills to it. The Council could even oust the Assembly's legislative mandate by taking over all of its responsibilities as it is also vested with legislative power¹⁵³.

The same subordination relationship also exists between the East African Legislative Assembly and the Summit. A clear case in respect to this relates to the fact that bills passed by the Legislative Assembly require the assent of the Summit to become law. Given the practice that presidents have to sign bills to become law in almost all countries of the world, it is all right that the Community presidency (the Summit) is vested with such power. But the problem is that the Summit can withhold assent to a passed bill at which point the Assembly will be forced to reconsider the bill for eventual resubmission. Even then, the Assembly is never sure whether the Summit will assent to a resubmitted bill. Indeed, the Treaty provides that 'if a Head of State withholds assent to a resubmitted bill, the bill shall lapse'.¹⁵⁴ This clearly supports the view that the Assembly as currently institutionalised will never be able to function independently and therefore must only work at the whims of the executive. Serious reforms are required to strengthen it. For example, like the national parliaments, there is need to empower it to pass a resubmitted bill that fails to attract assent from the Summit by a two-thirds majority if it is convinced of the bill's benefit to the Community. Such a device will ensure that the executive cannot for whatever reason obstruct legislation and therefore encourage non-decision making. This is important for the rapid growth of the Community.

¹⁵² Ibid. Article 15.3(b).

¹⁵³ See Ibid. Articles 14.3(d), 14.5 and 16.

¹⁵⁴ Ibid. Article 63.4

Thirdly, the Assembly and its membership should enjoy permanent tenure for the specified term. In this regard no authority should have power to dissolve it mid-term since such power can be used to sabotage its business by an act of caprice. Here the Assembly is being called upon to make its own rules and calendar to regulate its affairs. Equally important is a permanent tenure for its members to safeguard their independence. They should be allowed to enjoy a permanent tenure for the specified period unless a member dies, resigns, or is removed from the Assembly subject to its own rules. A critical evaluation of Article 51.3(b), which provides for a member to vacate a seat 'upon his or her ceasing to be qualified for election as a member' shows that other powers can easily hound a member out of office. A situation for instance where the nominating party in the respective national assembly withdraws its nomination and support for a member may clearly see the member in question 'cease to qualify for election' and hence be forced to vacate an Assembly seat. Situations of this kind should be completely eliminated so that the members of the Assembly are effectively removed from survivalist concerns to be able to concentrate on Community affairs fully. *Ex officio* members should also duly vacate their seats upon ceasing to hold offices by virtue of which they became members of the East African Legislative Assembly.

Like any other parliament, the East African Legislative Assembly is vested with the power to ensure the proper use of Community resources. This is apparent from Article 49, which empowers it to, among other functions, debate and approve the budget of the Community; and consider annual reports on the activities of the Community, and annual audit reports of the Audit Commission. To be able to discharge these functions effectively it would be important for the Assembly to establish sectoral and watchdog committees like the Public Accounts and Public Investment committees akin to those of the national assemblies in the member states. Such committees should be vested with appropriate powers so as to enforce transparency and accountability in the use of community resources.

One way would be to fully involve the Assembly in the process of drawing of the community budget and its implementation. For example, the European Parliament through the Assent Procedure enjoys considerable influence right from the stage of the preparation of budgetary proposals and this ensures that it is not reduced to rubber-

stamping budgets that are not responsive to the needs of the citizens of the EU¹⁵⁵. The East African Legislative Assembly should also have the right to ask questions in relation to the budget before approving it.. Commenting on the right to ask questions on the budget and resource utilisation with respect to the European Parliament (EP), Schmuck has observed:

The right to ask questions has considerable significance as a political instrument of scrutiny and is being used increasingly often by the EP. This right serves two main purposes: it enables scrutiny to be exercised on the bodies concerned, and, it is designed to draw their attention to important fields of activities and thus to spur them to take action... [it has thus] strengthened its co-operation with other central authorities especially the European Court of Auditors.¹⁵⁶

It is submitted that the adoption of such a procedure will equip the East African Legislative Assembly with the necessary powers to independently instil financial discipline in the affairs of the Community. Such independence will make it an 'institutional co-actor' with limited but real powers and functions. It will also turn it into a sort of laboratory for new ideas, a 'training camp' for politicians to gain international experience, an ombudsman for citizen's grievances, a monitoring body for regional activities and a driving force for further co-operation and integration. To strengthen the Assembly's hand in the community decision making process, it should also be vested with extended powers to be consulted over and approve appointments to Community offices like the secretary general, the deputies and the judges of the East African Court of Justice.

On the whole, to discharge its responsibilities effectively the East African Legislative Assembly must be vested with three types of legal and political powers. These are decisional powers, participatory powers and political means of influence¹⁵⁷. Decisional powers involve the ability of the Assembly to influence the outcome of the Community

¹⁵⁵ Stephen George, Politics and Policy in the European Union, op. cit. p.30.

¹⁵⁶ Otto, Schmuck, "The European Parliament as an Institutional Actor," in L. Hurwitz and C. Lequesne (eds.), The State of the EC: Policies, Institutions and Debates in the Transition Years. Boulder, Colorado: Lynne Rienner Publishers, Inc., 1991, p. 36.

¹⁵⁷ For this categorisation see, Grabitz *et al* p.75. For a discussion of the three types of powers see also. Stephen George, Politics and Policy in the European Union, op. cit. p. 37.

decision-making process by legal means. For example, the main decisional powers enjoyed by the European Parliament are the power to force the resignation of the Commission by passing a motion of censure with respect to it; the power to adopt or reject the budget including its margin for manoeuvre to add expenditure and to allocate expenditure within the non-compulsory sector and to give discharge in respect of the Union's audited accounts; and the power to give its assent to, or refuse treaties of association and accession.

On the other hand, participatory powers guarantee on a legal basis the involvement of the European Parliament in decision-making procedures without giving it the possibility to dominate the outcome. Consequently, the European Parliament has the right to be consulted in the normal community legislation through the Consultation Procedure while its approval or ratification of a new policy is mandatory through the Cooperation Procedure¹⁵⁸. This power is further enhanced by the fact that the Parliament in practice enjoys the right of appeal to the European Court of Justice in any policy decision in which it may not be in agreement with the Council of Ministers.

In terms of political means of influence, it involves those possibilities for the European Parliament to influence decisions that are not based on the EC treaties, but on its representative and deliberate powers, institutional agreements, or its internal rules of procedure and its contacts with other national and EC actors. This is referred to as 'corridor politics'. It includes the its informal notification by the Council and the Commission of the negotiation of trade and association treaties through the "Luns-Westerterp Procedure", the Conciliation Procedure for important legal acts with major financial impact, the budgeting conciliation "trilogue", the right to put questions to the Council and the foreign ministers, the right to set up committees of inquiry, the right to pass resolutions, and the right to send delegations and fact finding missions to third countries.

In reality, any comparison of the European Parliament with the East African Legislative Assembly will be a very big anomaly. This is because the East African Legislative Assembly is not vested with even half of the powers, which the European

¹⁵⁸ See Article 149(2), Treaty for the European Union.

Parliament enjoys. From this analysis, it is clear that a lot needs to be done to embed the Legislative Assembly as an institutional co-actor in the East African Community.

3.6 The Secretariat

The Agreement for the Commission for East African Co-operation had provided that the Tripartite Commission 'shall establish, at the appropriate time, a small secretariat to service and co-ordinate the work of the Commission'.¹⁵⁹ The spirit of this provision came to fruition at the conclusion of the Protocol on the Establishment of a Secretariat for the Permanent Tripartite Commission when the Secretariat was formally established. The headquarters seat of the Secretariat at Arusha is the subject of the Headquarters Agreement between the Secretariat and the United Republic of Tanzania. The Treaty legally establishes the Secretariat as an organ of the Community amongst a host of other organs including the Summit, the Council, the East African Legislative Assembly and the East African Court of Justice.¹⁶⁰

The Secretariat is vested with the offices of the Secretary General, two Deputy Secretaries General, and the Counsel to the Community.¹⁶¹ The Secretary General as the chief executive officer of the Community heads the Secretariat as well as being the accounting officer of the Community and the secretary to the Summit¹⁶². The latter function gives the Secretary General the right to attend Summit meetings. With respect to this particular provision, it is clear that the office of the Secretary General creates resonance with the President of the Commission of the EU who also attends the Summit meetings of the Heads of State and Government of the Western European countries. This tradition started with the Roy Jenkins presidency in 1976, when he secured the agreement of the Heads of State and Government that he should be present in Summit meetings.¹⁶³ While this buoyed the Commission's prestige and confidence as

¹⁵⁹ Article 6.01. Agreement for the Commission for the East African Co-operation. Secretariat for the Commission for East African Co-operation. Arusha. 1993.

¹⁶⁰ Article 9.1. The Treaty for the Establishment of the EAC. op. cit..

¹⁶¹ Ibid. Article 66.2

¹⁶² Ibid. Article 67.3

¹⁶³ Stephen George. Politics and policy in the European Union, op. cit. p. 13.

an institutional co-actor in the integration of Western Europe, time will tell whether the presence of the Secretary General at Summit meetings will translate to greater influence in Community decision-making process for the Secretariat.

The Secretariat is the executive organ of the Community¹⁶⁴. Consequently, it is vested with the powers both to initiate and implement policies in the interest of the Community. The following is an analysis of these functions under these two broad categories.

3.6.1 Secretariat as Initiator of Community Policies

The role of the Secretariat as 'initiator' of policies can be discussed under five broad headings. These are strategic goal setting; policy formulation; the drafting of legislation; preparation of the budget; and political management.

3.6.1.1 The Secretariat as Strategic Goal Setter

In conformity with the strategic goal setting role that the Secretariat must assume, it is provided in the Treaty that the Secretariat shall be responsible for the 'strategic planning, management and monitoring of programmes for the development of the Community'¹⁶⁵. As the strategic planner of the Community, the Secretariat is expected to prepare proposals to be submitted to the Council, the Assembly, and the Summit for timely policy making; and to provide benchmarks and a time frame for the achievement of Community set goals. This function requires a measure of independence on the part of the Secretariat. It must be prepared to de-link itself from the various disagreements in the Council and the Summit and set a coherent programme, and effectively get the decision-making institutions to work on its timetable. The former President of the EU Commission Roy Jenkins' diary entry for August 2, 1977 best captures this function:

I did a general summing up, of which the main import was that as the harsh reality that none of the three main governments, France, Germany or Britain, was prepared to support a major Commission initiative, we combined with trying to get certain urgent, practical things through, had to be prepared to go against them and to blaze a trail to a greater extent than we had done

¹⁶⁴ Article 66.1. Treaty for the Establishment of the EAC. op. cit.

¹⁶⁵ *Ibid.* Article. 71.1 (c).

previously, however much this offended people, and that the obvious direction for this was towards monetary union.¹⁶⁶

This kind of policy assault will inevitably require powers that the Treaty does not currently vest in the Secretariat. Institutional reform is therefore necessary. However as the experience with the EU Commission has shown, the success of this process requires charismatic leadership on the part of the chief executive (in the EAC case the Secretary General) to be able to pursue any set objectives consistently and continuously. The effectiveness of general leadership of course differs from one personality to the other. For example, Walter Hallstein, Roy Jenkins and Jacques Delors were very good as Presidents of the Commission, while Franco Malfatti and Gaston Thorn could not measure up to the task. In conclusion, it is observed that strategic goal setting, if it is to be beneficial, must be closely linked with the Community's agreed objectives and must be operational. This was the overriding characteristic of Hallstein's leadership at the EU Commission as Ludlow has observed:

...He had clear points of reference in the Treaty of Rome: His task was to translate its aspirations into a realistic but ambitious operational plan to ensure that the Community kept to its timetable. Hallstein's commissions were commissions of the clock, even if, in order to complete particularly troublesome negotiations, the clock had to be stopped for hours, or on certain occasions, even days... Delors' leadership has much in common with the Hallstein method.¹⁶⁷

Whether the Secretariat is up to this task remains for time to tell. But given the fact that it has to work from under the wings of an inter-governmental Co-ordination Committee, it is clear a lot needs to be done to give the Secretariat the requisite powers to fully discharge its mandate.

3.6.1.2 The Secretariat as Policy Formulator

The Secretariat's function as "policy formulator" is enshrined in Article 71.1(a) by which it is given responsibility for 'initiating, receiving and submitting

¹⁶⁶ Jenkins, European Diary, 1981, p. 135. See also Peter Ludlow, The Making of the European Monetary System, London: Butterworth, 1982, p.43.

¹⁶⁷ Peter Ludlow, "The European Commission," in Robert O. Keohane and Stanley Hoffmann (eds.), The New European Community: Decision Making and Institutional Change, Boulder: Westview Press, 1991, p. 97.

recommendations to the Council through the Co-ordination Committee. Here it should be observed that the Secretariat does not make policies *per se*. Instead it prepares policy proposals, which it submits to the other organs of the Community charged with policy making proper through the Co-ordination Committee like the Council, the Summit and the Assembly. In this respect the Secretariat occupies a very important position in the community policy-making process, as it is the originator of all community policies.

This function places a very heavy burden on the Secretariat. It requires that the Secretariat hold at its disposal empirical data and information on the progress of the Community and obstacles that need to be removed to accelerate the process of co-operation and integration. In recognition of this fact the Treaty vests in it the responsibility for 'the initiation of studies and research related to, and the implementation of, programmes for the most appropriate, expeditious and efficient ways of achieving the objectives of the Community.'¹⁶⁸ This effectively makes the Secretariat the Community's research organ. Due to this, the Secretariat plays a very crucial role in the decision making process in that it proposes draft agenda for meetings of the Co-ordination Committee, the Council and the Summit.¹⁶⁹ The effect of this is that the Secretariat does not only have a formal right of starting the formulation of community policies, but also controls the agenda of these organs.

This function as formulator of policy is reflective of the early EU Commission and Jean Monet's *Commissariat du Plan* of the French Government after the Second World War. The Commission was designed from the onset to produce ideas, studies, policy papers, and a programme towards greater European integration.¹⁷⁰ These functions fit well into the docket of the Secretariat. Though it is expected that the Secretariat will have its own research bureau, this function may compel it to co-opt researchers and research organisations to assist it to generate accurate information and

¹⁶⁸ Article 71.1(b). Treaty for the Establishment of the EAC. op. cit.

¹⁶⁹ Ibid. Article 71.1 (k)

¹⁷⁰ J. Monnet, 'A Ferment of Change', The Journal of Common Market Studies, 1. 1962-3. pp194-217. p. 206.

data leading to the formulation of opportune policies that will go a long way in increasing the prospects of greater co-operation and integration in the Community. This will require that more resources be placed at the disposal of the Secretariat to fulfil this obligation.

3.6.1.3 The Secretariat as Initiator of Legislation

Out of the vast repertoire of information and data generated from the studies and researches that it is empowered to initiate, the Secretariat is expected to prepare proposals for community legislation. Indeed, the Treaty provides that the Secretariat shall be responsible for 'forwarding of Bills to the Assembly'.¹⁷¹ This is an important function and the Secretariat through this provision determines the direction community legislation is to take. Effectively then, like in the case of the Council and the Summit the Secretariat exercises some measure of control over the agenda of the East African Legislative Assembly.

While the Secretariat has the responsibility to initiate legislations through the instrument of draft bills, it lacks the capacity to follow up on its proposals to ensure that the Council and East African Legislative Assembly promptly translate them into community laws. For instance, in the EU the Commission is legally enjoined into the legislative procedures of the Union, something that is lacking with regard to the Secretariat. Under the normal consultation procedure of decision-making, Article 149 of the Treaty of Rome requires unanimity on the part of the Council to amend any Commission proposals. Further, in the modified co-operation procedure approved by the Single European Act (SEA) under which the European Parliament (EP) has a greatly enhanced role, the Commission's position as both intermediary and in some respects, arbiter between the Council and the EP is even more striking.¹⁷² Therefore, for the Secretariat to perform this role properly, there is need to place it within the rubric of the actual community law making process, otherwise the Council and the East

¹⁷¹ Article 71.1(a), Treaty for the Establishment of the EAC, op. cit.

¹⁷² Peter Ludlow. "The European Commission". in R. O. Keohane and S. Hoffinan (eds.), The New European Community: Decision Making and Institutional Change, op. cit p.100.

African Legislative Assembly will always stand in the way of its policy and legislative programmes.

3.6.1.4 The Secretariat as Financial Manager

Article 71.1(i) places on the Secretariat responsibility for 'the submission of the budget of the Community to the Council for its consideration'. Additionally, Article 71.1(h) places the general administration and financial management of the Community within the ambit of the Secretariat. The effect of this is that the Secretariat is vested with responsibility to appropriate funds to run the business of the Community. This requires accurate financial accounting to present a budget that will cover the expenses the community is expected to incur in the given financial year. These include payments for services and materials for use by the Community. Just like national budgets, the community budget must address sectoral priorities and other matters of interest to the Community.

As currently constituted, the sources of the Community budget are contributions by the partner states, and receipts from regional and international donations.¹⁷³ With respect to sourcing budgetary support externally the Treaty imposes a special responsibility on the Secretariat for 'the mobilisation of funds from development partners and other sources for the implementation of community projects.'¹⁷⁴ Unlike the EU, which provides that the Community budget must not constitute more than 1.2% of Gross National Product (G.N.P), the Treaty for the Establishment of the East African Community does not provide any ceiling on the amount of funds that a budget should appropriate for expenditure. After consideration by the Council, the budget requires approval by the Assembly to give it effect.¹⁷⁵ A major weakness that emerges on the part of the Secretariat is that it is never really involved in the actual decision-making over the budget. After submitting budgetary proposals to the Council, its business end there as it is left to the Council and the Assembly to consider, debate and approve it. This is unlike the Commission, which is involved in the budget making process every

¹⁷³ Article 132.4. Treaty for the Establishment of the East African Community, op. cit.

¹⁷⁴ Ibid. Article 71.1(i)

¹⁷⁵ Ibid. Article 49.2

stage of the way strengthened by the pre-SEA provision that votes in Council on the budget are by qualified majority. This gives the Commission greater leeway to actively participate in the decision making process. If the Secretariat is expected to assume its full role as an agency for greater co-operation in East Africa as the Commission has done in Western Europe, then there is need to enjoin it as a key cog in the decision-making process.

3.6.1.5 The Secretariat as Political Manager

Lastly, it should be understood that the Secretariat's task as the driving force for East African integration involves both political flair and technical expertise. This requires that it emerge from the shadows of the Council and the Summit to take its right position as the agent for greater East African co-operation. It should also evolve from the intergovernmental 'council' that it currently is to a caucus of experts and activists committed to the success of the East African Community.

Like the EU Commission president the Secretary General must have an independent profile to play a supranational political role, appealing to public opinion or important social groups throughout the Community. That office must be able to forge working relationships with big business, the private sector and civil society so as to rally their joint efforts in the achievement of the objectives of the Community. In this respect, the Secretariat must be able to provide political management and leadership to the Community if it is to prosper. This similarly requires institutional reform to accord the Secretariat the functional powers to execute this role without undue influence by the Council and the Summit.

3.6.2 Secretariat as Implementer of Community Policies

On completion of the enactment of legislation by the Assembly and the approval of policies by the Council and the Summit, it is to the Secretariat that the spotlight again turns as the Community's implementing agency. This is in line with the Treaty's provision that 'the Secretariat shall be executive organ of the Community.' In its discharge of this function, the balance between state control and supranational independence reflects the consensus of the political realist debate of the 1960s and 1970s. With regard to this issue, states have tended to be reticent towards a system that takes away control of affairs from national governments to supranational bodies.

Supranational control or 'dirigisme', as it was called, was the main thrust of the Schuman Plan that established the European Coal and Steel Community (ECSC), the forerunner of the EU. It sought to have the High Authority, an institution above the control of the governments of member states, take over economic planning, coordination and implementation of Community policies.¹⁷⁶ And the member governments as expected, vehemently opposed it.

At the formation of the European Community (EC) in 1963, the relationship between the supranational executive (the Commission) and the intergovernmental Council of Ministers continued to be frosty as the member governments jealously guarded their sovereignties to the extent of making the Commission's operations impossible. Things came to a head when in 1965, when the Commission tried to bypass state control by proposing autonomous budgetary financing from the Community's 'own resources' generated from tariffs and levies on agricultural imports. This entailed the strengthening of the budgetary powers of the EP in the interest of democracy and accountability, as these resources would escape national parliamentary control. Charles de Gaulle, the then president of France, objected to this and withdrew France from participation in the business of the EC.¹⁷⁷

The result was the abandonment of the transition to qualified majority voting in the Council of Ministers and the creation of the Management Committee, which in large part constricted the mandate of the Commission further. The management committee consist of national civil servants who allow national control to be retained over the details of the implementation of policies.¹⁷⁸ These officials exercise this by having to approve any of the Commission's actions with regard to the implementation of commonly agreed policies hence denying the Commission autonomy of action.

¹⁷⁶ See Stephen George. *Politics and Policy in the European Union*. op. cit. p.3

¹⁷⁷ See. S. Holt. "Policy-making in Practice: The 1965 Crisis." in J. Barber and B. Reed (eds.), The EC: Vision and Reality. London: Groom Helm, 1973. pp. 56-73. p. 69.

¹⁷⁸ See C. Bertram. "Decision-making in the E.E.C.: The Management Committee Procedure," in Common Market Law Review. 5, 1967. pp.246-264. p. 257.

In the Secretariat's instance, it is expressly provided in the Treaty that it shall discharge its responsibilities and functions, both as initiator and implementer of Community policies through the Co-ordination Committee.¹⁷⁹ Like the Management Committee of the EU, the Co-ordination Committee is composed of officials in the service of the member governments - permanent secretaries in charge of regional co-operation. The effect of this is that the partner states retain the last word as to what can be implemented and how it will be implemented. So long as power considerations remain the major factors informing the Community building process then it is clear that supranational institutions like the Secretariat will never be able to assume their full roles as catalysts for further co-operation and integration. Institutional reform remains the only hope to empower the Secretariat to execute its obligations with respect to its role as the implementing organ of the Community effectively and efficiently.

It is now accepted that the failure of nearly every initiative towards regional integration in Africa has been as much the result of flawed conception, as defective policy formulation and haphazard execution of such policies.¹⁸⁰ Therefore, there is an urgent need to streamline the decision-making by empowering the relevant organs and institutions of the Community to make them 'co-actors' in the overall Community policy formulation and implementation process. For now, not even the decision-making procedures have been formulated as the necessary protocol on decision-making is yet to be concluded. This notwithstanding, it should be observed that the community decision-making organs should be co-ordinated and made to operate within a coherent framework. For example, the Secretariat should not just initiate proposals and leave them to the Assembly, the Council and the Summit only to receive them as laws and policies at the end of the tunnel for implementation. It must be given an active role in the decision-making process because after all, it is the organ that knows the facts as they are on the ground through the researchers and studies that the Treaty empowers it to commission. Further, the Co-ordination Committee must not overly tie its hands at

¹⁷⁹ See for example Article 71(a), (e) and (g), Treaty for the Establishment of the EAC, op. cit.

¹⁸⁰ P. Anyang' Nyong'o, "Regional Integration in Africa: An Unfinished Agenda," in P. Anyang' Nyong'o (ed.), Regional Integration in Africa: Unfinished Agenda, Nairobi: Academy of Sciences Publishers, 1990, pp.3-13, p.6.

the policy implementation stage. As the experience in Western Europe has shown, the growth of the supranational style holds the greatest promise for deepened co-operation and integration.

CHAPTER FOUR

POLITICAL CO-OPERATION IN THE EAST AFRICAN COMMUNITY

4.1 Introduction

Throughout history, social groups, nations and nation-states have sought co-operation with their neighbours either through peaceful or violent means.¹⁸¹ East African countries have not been an exception to this rule. Indeed, co-operation amongst the three East African countries of Kenya, Uganda, and Tanzania spans the whole of the last century. The construction of the Uganda Railway (later the Kenya-Uganda Railway) towards the end of the 19th century and the early part of the 20th century represents an important landmark in the treatise on East African co-operation.

This chapter endeavours to place East African co-operation, particularly in the political realm within a historical context. The current East African Community (EAC) with its ultimate objective of political federation via a customs union, a common market, and a monetary union¹⁸² clearly places great premium on political co-operation if this objective is to be achieved. Common foreign and security policies are envisaged to play an important role in the quest for the realization of an East African federation¹⁸³. To begin with, the chapter presents a conceptual discussion of the key concepts related to the overall theme of political co-operation. These concepts are: political integration; political federation; and political union. It will then trace the development of political co-operation in East Africa from the pre-independence period,

¹⁸¹ Mukandala, R. "Political Co-operation". in Perspectives on Regional Integration and Co-operation in East Africa. (Proceedings of the 1st Ministerial Seminar on East African Co-operation, 25-26 March 1999). EAC Secretariat, Arusha, 2000. pp. 87-106. p.87.

¹⁸² Article 5.2. Treaty for the Establishment of the East African Community. EAC Secretariat, Arusha, 1999.

¹⁸³ *Ibid.* Article 123.1.

through the defunct East African Community to the current East African Community. Major landmarks of this process includes the East African High Commission (EAHC) established in 1948; the East African Common Services Organisation (EACSO) that took over the functions of the EAHC after independence; the defunct EAC established by the Treaty of the East African Co-operation signed in 1967; and the current EAC established by the Treaty for the Establishment of the East African Community in November 1999.

4.2 A Conceptual Discussion

The Treaty for the Establishment of the East African Community, as has been noted before, identifies political federation as the ultimate objective of East African co-operation. This is to be achieved in stages beginning with a Customs Union, a Common Market and then a Monetary Union. For better understanding of political co-operation, it is important that the concept be clearly defined. In the course of this activity, it is inevitable that it has to be compared and differentiated from other closely related concepts. Then explanation would be sought as to why it is important and why it has been difficult to attain both in East Africa and elsewhere. These related concepts are; political integration, political federation and political union.

If these concepts were to be put in a continuum, political co-operation will be at one end, with political federation in the middle and political union at the other end. This progression is informed by the distinction made between “low” and “high” politics as propounded by Stanley Hoffmann and others. Hoffmann defines these two categories thus:

“Low politics is concerned with issues in which the interests of participating units are calculable and which represent only a fraction of the total resources of such units. Central to high politics, on the other hand, are the critical interests of national diplomacy and strategy for which nations prefer self-reliance to any type of control by supranational bodies.”¹⁸⁴

¹⁸⁴ Hoffmann, Stanley. Gulliver's Troubles or The Setting of American Foreign Policy? New York: McGraw Hill, 1968, p. 404.

Therefore, more and more of the states' core interests – high politics - get involved in the progression from political co-operation through political federation to political union.

Political unity therefore represents the highest level of co-operation between states with most, if not all, those issues that are classified as “high” politics being regulated by some central authority. It is the ultimate goal of co-operating parties and entails a shared political jurisdiction in which the parties to the union agree to surrender either all or part of their sovereignty to a central political unit.¹⁸⁵ It is possible that the political union may operate at some federal level where certain issues are left to the state governments while others are handled by the Federal government. Still following on the “low” and “high” politics dichotomy, the state governments are mostly left to handle matters of low politics like health, education and other social issues, while the federal government handles matters of high politics involving the key national interests of diplomacy, strategy, defence and security. The United States of America present a classic example of this model of political union.

In the case of a political federation, one or a number of common objectives brings the participating member states together but each one of them remains independent of the others. Friedrich defines it as “a union of groups, united by one or more common objectives, but retaining their distinctive group character for other purposes.”¹⁸⁶ In this respect, each member state is sovereign in its own sphere and only comes into contact with the others when they are pursuing the commonly agreed policies or objectives. Unlike in political unity, in political federation each member state pursues its own foreign policies, it will have its own central defence forces, its own money and control its own economy. Since it is the degree to which ‘high’ politics issues are the subject of common action that differentiates between political federation and political unity, at the level of political federation, fewer core interests are pursued at the group level. Therefore low politics issues like immigration laws, cultural exchanges and education

¹⁸⁵ Mukandala, R. “Political Co-operation”. In Perspectives on Regional Integration and Co-operation in East Africa, op. cit. pp.87-106, p. 89.

¹⁸⁶ Friedrich, C. J. “New Tendencies in Federal Theory and Practice”, 1964. Mimeo.

will easily fit into the arrangements of a political federation as opposed to core interests like diplomacy and defence. It should be emphasised however that even in their loosest forms, federations like political unions require a certain degree of direct surrender of jurisdiction to the supranational authority.¹⁸⁷ This is normally in respect of the agreed areas of co-operation.

Political integration represents the consequent process towards either political federation or union. "It is the process whereby political actors in several distinct national settings are persuaded to shift their loyalties, expectations, and political activities towards a new centre, whose institutions possess or demand jurisdiction over the pre-existing nation states."¹⁸⁸ Political integration fosters concertation and hence joint decision-making amongst the member states that are involved in the federation or union. It thus represents a process limited to the development of measures for reaching collective decisions by means other than unilateral action by the member governments. Political integration, which aims at a significant level of collective decision-making, is achievable without necessarily aiming at the attainment of a political federation or union.

Political co-operation on the other hand involves mutual policy arrangements among the member states aimed at attaining common interests and objectives.¹⁸⁹ One striking difference between political co-operation and federation is that in federation common objectives are already identified and thus form the basis of co-operation while political co-operation is a process through which common interests and objectives are worked out. Unlike a federation or union, political co-operation does not necessarily require the surrender of jurisdiction to a central institution. This means that at the level of political co-operation, the members enjoy maximum sovereignty with respect to their interests and can resort to unilateral action to counter threats to these interests. It is

¹⁸⁷ Hazlewood, A. African Integration and Disintegration: Case Studies in Economic and Political Union. London: Oxford University Press, 1967. p. 33.

¹⁸⁸ Haas, E. The Uniting of Europe. London: Stevens and Sons, 1958. p. 16.

¹⁸⁹ Mukandala, R. "Political Co-operation." in Perspectives on Regional Integration and Co-operation in East Africa. op. cit. pp. 87-106. p. 90.

therefore a much broader and consequent process that involves many more issues without the intensity and depth of interaction that federation or union entails.

Therefore while political co-operation among states may set out to ensure peaceful co-existence, friendship and solidarity, and mutual respect for national sovereignty, political integration towards a federation for instance may involve such issues as the establishment of collective institutions, and the development and implementation of common defence and foreign policies. The importance of political co-operation cannot however be overemphasised as it provides the basis upon which a political federation or union among states can be built. Mukandala has used the metaphor of a marriage to illustrate the differences between the concepts thus:

“...Using marriage as a metaphor, while political union or federation constitutes a marriage, political co-operation is just friendship between the partners. Integration, a process of engagement between the partners.”¹⁹⁰

The East African Co-operation Development Strategy (1997-2000) and the Treaty for the Establishment of the East African Community clearly identify economic integration as the immediate objective of East African co-operation. Political co-operation is here treated as being an important means of facilitating economic integration and also “as an end in itself”¹⁹¹ leading to the attainment of political federation. Economic integration on its own has the potential to create features of political integration as an unintended consequence. This happens if economic integration leads to the development of central institutions and policies; if the tasks assigned to these institutions are important enough to concern major groups in society; if the tasks assigned these institutions are specific; and if the tasks are inherently expansive. In the East African case, co-operation is expected to lead to the development of central institutions charged with collective decision-making initially in the economic sector. In a sense, the partner states will have to give up power to make unilateral decisions with respect to matters within that sector. The result will be the development of policies and programmes that will affect a wide spectrum of groups in

¹⁹⁰ Ibid. p. 19.

¹⁹¹ Par. 119. East African Co-operation Development Strategy (1997-2000), Secretariat of the Permanent Tripartite Commission for East African Co-operation. Arusha. 1997.

the member states. This will involve a change of behaviour on the part of these groups so as to adjust to the new institutions, rules and policies.¹⁹² Thus the institutional framework plus the stipulated policy priorities in the economic sphere provide East African co-operation with great impetus for unintended political integration.

The process of political integration requires certain facilitative forces for it to be realised. These forces reflect the cost-benefit calculations amongst the co-operating parties. Birch¹⁹³ has identified social and economic factors as being the driving forces behind political integration. He points out that expectations of economic advantage and cultural bonds, which generate a feeling of community, tend to create conditions for federal integration. Deutsch¹⁹⁴ concurs with Birch and emphasises that the expectation of economic gains, a distinctive way of life and unbroken links of social communication constitute the most important conditions for integration. However, history has borne out that political co-operation remains the single most important basis for any meaningful level of integration:

“Its importance lies primarily on the fact that in order for any co-operation or integration to be established, there has to be a sense of political will, that is a readiness to be enjoined in a group. This is a critical *sine qua non*. Also, the willingness on the part of politicians to participate in a co-operation or any kind of integration depends on the particular gains from the organisation. Perhaps it is safe to assert that there exists a symbiotic relationship between political will on the one hand and anticipated gains to be generated out of the collective organisation on the other.”¹⁹⁵

However while economic integration has been tried with various degrees of success in many co-operation schemes, political co-operation and integration have remained very elusive. A desire towards political federation or even union for a number of countries has turned out to be a dream that is unattainable. The difficulties in attaining

¹⁹² Mukandala. R. “Political Co-operation”. in Perspectives on Regional Integration and Co-operation in East Africa. op. cit., pp.87-106, p. 92.

¹⁹³ Birch. A.R. “Approaches to the Study of Federalism.” Political Studies. No. 1. 1966. pp. 41-63. p.52.

¹⁹⁴ Deutsch. K. *et al.* Political Community and the North Atlantic Area. 1957.

¹⁹⁵ Mukandala. R. “Political Co-operation.” in Perspectives on Regional Integration and Co-operation in East Africa. op. cit., pp. 87-106. p.92.

political federation or union stems from the extreme importance associated with the nation-state by the traditional Realist paradigm¹⁹⁶. While Realism holds that each state is autonomous and sovereign, and pursues its self interests to enhance its power *vis-à-vis* other international actors, the process of political integration runs against these principles as it requires a direct surrender of power to some central authority. Further, while federation still leaves each member state sovereign, there is a general tendency for state politicians not to be willing to be subject to a centralising authority unless this serves their economic, political, social, diplomatic or strategic interests. Birch has observed that when state politicians “are under no threat, external or internal, from which [they] hope that the integration might protect them, there will be a natural reluctance for them to surrender their autonomy.”¹⁹⁷

In addition, the will to surrender state autonomy will be minimal when political leaders believe they will have nothing but a subordinate position in the proposed federation. For these reasons, political co-operation and integration require a lot of negotiations, particularly on common interests in order to maintain the leaders’ commitments and obligations. The negotiations must essentially be turned into a positive sum game in which every group goes away with something from the negotiating table. Haas calls this process the “upgrading of common interests”.¹⁹⁸ Political co-operation to use Solzhenitsyn’s analogy is like riding a bicycle – the rider remains on top as long as he is cycling. When he stops, he loses momentum and, finally, the bicycle topples over. Therefore, any form of political co-operation can only succeed when the political leadership appreciates that there are strategic gains to be made and works tirelessly for their realisation. This is what makes political co-operation critically important in any co-operation or integration venture but also extremely difficult to attain. It thus explains the general failure that has been witnessed

¹⁹⁶ See Morgenthau, J.H. and Thompson Kenneth, W. Power Among Nations: The Struggle for Power and Peace. New Delhi: Kalyan Publishers. 1985.

¹⁹⁷ Birch, A.R. “Approaches to the study of Federalism.” Political Studies, op. cit. p.29.

¹⁹⁸ Haas, E. Beyond the Nation-state: Functionalism and International Organisation. Stanford: Stanford University Press. 1964. p. 14.

amongst several regional co-operation initiatives in their quest for political integration, the defunct East African Community included.

4.3 Political Co-operation in East Africa in the Pre-independence period, 1890s - 1961

Efforts to unify East Africa date back to the late 19th century when the then British Special Commissioner for East Africa, Sir Harry Johnstone recommended the amalgamation of the territories that are now Uganda and Kenya into a single political entity. The development of co-operation during this period can be traced through two discernible phases.

The first phase began towards the end of the 19th century and lasted till 1920. It was primarily marked by various initiatives to integrate the economies of Kenya and Uganda. Political unity between Kenya and Uganda had proved increasingly unworkable due to the divergent and continuously dissimilar colonial policies that were pursued in the two territories. This notwithstanding, various co-operation arrangements were entered into. Key features that predominated this period include the construction of the Uganda Railway that reached Kisumu (then Port Florence) in 1901, the establishment of the Court of Appeal for Eastern Africa in 1902, the formation of a postal union between the two territories in 1911, the conclusion of a customs union in 1917 and the establishment of an East African Currency Board that assumed control over the issuance of East African money in 1920.¹⁹⁹

It is clear that the various joint initiatives of this time focussed more on economic co-operation and had less to do with political co-operation. Tanganyika, which by then was a Germany colony, was not involved in these joint schemes. This period also witnessed the disruptive effects of the First World War (WW1) between 1914-1918. Whether this war affected the process of co-operative development, negatively or otherwise, is left to debate. Safe to add that the War saw Germany get defeated and consequently got pushed out of Tanganyika, which became a UN Trustee under

¹⁹⁹ Sohn Louis. B. (ed). Basic Documents of African Regional Organisations III. New York: Oceana Publications Inc., 1972. p. 1095.

Britain. This necessitated the inclusion of Tanganyika into the East African co-operation arrangements after 1920.

The second phase ran from the early 1920s until 1961. Like the first phase, co-operation in the earlier years of this phase was greatly preoccupied with economic integration of the economies of the three territories. Since Tanganyika was now part of the co-operative venture, the early part of this phase saw the existing co-operation arrangements between Kenya and Uganda extended to it. Measures that were taken to integrate and interlink the economies of the three territories included: the introduction of a common currency, the East African shilling; the formation of a common market; a Joint East African Tax Board; and a Joint Economic Council. The "Closer Union Movement" or "the Settlers' Federation Movement" that began in earnest in 1924 revisited the question of East African unity. As the name suggests, this was a settlers' undertaking and it was motivated by the desire to create large colonial units to increase Great Britain's status and prestige as a world power.²⁰⁰ Four state papers between 1924-1931 dealt with the question of East African Federation extensively. These were Ormsby-Gore Commission of 1924, the Hilton Young Commission of 1927, the Samwel Wilson Report of 1929, and the Joint Select Committee of Both Houses of the UK Parliament of 1931.

The Ormsby-Gore Commission was mandated to consider the question of federation for the East African territories. It came to the conclusion that federation was undesirable for practical reasons of expense and because of the strong opposition presented by Africans and Indians. It hence recommended increased economic co-ordination and the holding of Governor's Conferences to chart a common way forward for East Africa. These recommendations were not accepted. Consequently, the Hilton-Young Commission was set up to examine the question of "federation or some other form of closer union for effective co-operation between the different governments in Central and East Africa".²⁰¹ In its report, the Commission favoured a federation for

²⁰⁰ Ibid. p. 1095

²⁰¹ Colonial Office. Report of the Commission on Closer Union of the Dependencies in Eastern and Central Africa (Sir Hilton Young, Chairman). cmd 3234. London: HMSO, 1929.

East Africa with conditions that settlers' influence be reduced, and imperial control especially with respect to the protection of African interests be increased. The report sparked a furore and Sir Samuel Wilson was dispatched to East Africa to re-examine its recommendations 'on the spot'. On his part, Wilson proposed a High Commission to administer common services, that African interests remain a territorial matter and that the settlers in Kenya be given an enhanced position with a majority in the Legislative Council (Legco).²⁰²

The Joint Select Committee was established in 1930 to review the question of East African federation. It reported in 1931 against a political association of any nature on grounds of both expense and lack of consensus among the population of East Africa on the matter. It instead recommended the intensified use of Governors' Conferences to secure the benefits of economic co-ordination. It is clear that the Select Committees recommendations echoed the Ormsby-Gore Report. Consequently, East African co-operation was pursued through the instrument of the Governor's Conferences until 1948 when the East African High Commission (EAHC) was formed. During this time, the three governments were controlled from London (Tanganyika was a UN Trustee under Britain) and they shared a common political philosophy and the consequent economic policies. The EAHC exercised political power in the three territories with the Kenyan Governor as its permanent chairman. It has been argued that this was a political co-operation whose main objective was furthering the aims of economic integration:

"The Governor of Kenya was the permanent chairman of the Commission. He had certain powers to act on behalf of the Commission when it was not in session. This was a political co-operation whose scope was limited to only providing the critical support and context for economic co-operation. Though responding to different domestic pressures and group interests, the three governments were unified in philosophy, purpose and strategy. This unity was reinforced by the East African Central Legislative Assembly which in most cases worked in tandem with the Commission."²⁰³

²⁰² Colonial Office. Report of Sir Samuel Wilson on his Visit to East Africa. Cmd 3378. London: HMSO. 1929.

²⁰³ Mukandala. R. "Political Co-operation." in Perspectives on Regional Integration and Co-operation in East Africa. op.cit. pp. 87-106. p. 94-95.

As independence for the three territories drew nearer, it was felt that the framework upon which East African co-operation operated needed to be reviewed. The Raisman Commission was appointed 'to examine the arrangements, to consider their advantages and disadvantages, and in particular, whether they were fair to the individual territories, and to make recommendations for necessary adjustments, additions, or modifications to them.'²⁰⁴ While acknowledging that there were apparent disadvantages for Uganda and Tanganyika with respect to the Common Market arising from Kenya's position as the more developed of the three territories, it also observed that there were beneficial 'spill-over effects' on Uganda and Tanganyika from the advanced development of Kenya. It hence concluded that the common market arrangements were beneficial to East Africa as a whole, that its workings could be validly criticised for producing an unequal distribution of benefits rather than for imposing losses on any member, and that no territory would likely gain by withdrawing.

During revision talks in June 1961 in London between delegates from the UK Government, the three East African territories and the High Commission, it was agreed that common services continue to be provided on an East African basis. The East African Common Services Organisation (EACSO) was formed to take over the administration of the common services from the High Commission towards the end of the year when Tanganyika attained its independence. Uganda and Kenya attained their self-rule in 1962 and 1963 respectively.

The period 1923 through 1948 when the EAHC was established to 1961 when it was replaced with the EACSO can be described as the golden era of political co-operation in East Africa. The three governments shared a common political philosophy. Political co-operation was geared to creating the necessary environment for successful economic co-operation that was epitomised by their joint investments in common services. Co-operation was not motivated by the desire to create an East African federation or union.

²⁰⁴ Colonial Office. East Africa: Report of the Economic and Fiscal Commission (Sir Jeremy Raisman, Chairman). Cmd 1929. London: HMSO, 1961.

4.4 Political Co-operation in the Defunct East African Community. 1967-1977

At the dawn of independence political unity between the three East African countries greatly preoccupied the emerging political elites. In fact as early as 1960, Mwalimu Julius Nyerere had raised the issue of political federation for East Africa at the Addis Ababa Conference of independent African states urging for simultaneous independence of the territories of Kenya, Uganda and Tanzania as 'one political unit'. As it became apparent that the three territories will get their independence at different times, with Tanganyika's coming first towards the end of 1961, Nyerere again announced his willingness to delay Tanganyika's independence so that the three countries could become independent at once together as one political unit.

These efforts at federation came to nought due to a lack of strong political will and commitment on the emerging leaders to make this a reality. The respective leaders of the three countries were more preoccupied with the independence of each territory on its own. Additionally, the exigencies of nation building after independence dictated that the political elites had to consolidate power at the exclusion of any other consideration. This meant that the quest for East African federation had to be sidestepped as concern now shifted to national development:

"Independence introduced centrifugal forces that soon pre-empted moves towards political federation that was to be ushered in by the Nairobi Declaration of 1963. Though usually reduced to ideological and personal differences, the centrifugal forces were formidable and structural."²⁰⁵

The workings of the common market had seen dissatisfaction continue to fester especially in Uganda and Tanzania. This resulted in unilateral withdrawals from the common co-operative arrangements. These included Tanzania's withdrawal from the East African Navy, Uganda's withdrawal from the East African Travel Association and the break-up of University of East Africa into three separate universities on national

²⁰⁵ Green. H.R.H. "The EAC: A Valediction Forbidding Mourning." The African Review, Vol. 8., No. 1 and 2, 1978. pp. 21-35. p. 27.

basis. But the last nail in the coffin of the common market was dealt when the three countries made decision to issue separate currencies²⁰⁶.

The point of contention in the common market saga was the belief in Uganda and Tanzania that Kenya was getting a disproportionate share of benefits accruing from the common arrangement at their expense. Though the economies of Uganda and Tanzania expanded faster than that of Kenya, Kenya was seen as benefiting more on account of its interterritorial trade surpluses and rapid industrial expansion²⁰⁷. The Kampala – Mbale Agreements' industrial redistributive proposals failed to help as Kenya not only refused to ratify them but also went ahead to establish a tyre factory within its territory. This was in contravention of the Agreement's provisions that had allocated any industry dealing in tyres to Tanzania. In retribution, Tanzania imposed unilateral import quotas and other restrictions on Kenyan products, which spelt the death knell on the common market.

In reaction to this, Kenya in 1965 called for a heads of state meeting to review the Common Services Agreement and discussions on all aspects of economic co-operation in East Africa. The result was the establishment of a Commission on the Common Market and Common Services to negotiate what was envisaged as the permanent solution – the Treaty for the East African Co-operation. It consisted of three ministers from each member state with an independent Chairman Kjeld Philip. It submitted its report in mid – 1966 and after debate on the proposals the Treaty was signed in June 1967 coming into force in December of the same year thereby establishing the former East African Community.

The main decision making institutions of the former Community were the East African Authority which was the supreme decision-making organ; the East African Legislative Assembly; the East African Ministers; the Common Market Tribunal; the Common Market Council; the Communications Council; the Finance Council; the

²⁰⁶ Hazlewood. A. Economic Integration: The East African Experience. op. cit. p.64.

²⁰⁷ Olatunde Ojo. "Regional Co-operation and Integration". in Ojo *et al* African International Relations, op. cit. pp. 142-181. p.158.

Economic and Consultative Council, and the Research and Social Council²⁰⁸ Other than the East African or Community Minister. 'an individual appointed by each state to promote the Community's interests and project its view points in his or her own cabinet' the Community took over all the institutions of the EACSO. Just like co-operation at this time was economic driven it is clear that most of the institutions established were those to regulate the operations of common market.

Even after the establishment of the former East African Community in 1967, sharp ideological differences between the three member states still remained apparent. For instance, Kenya's Sessional Paper No. 10 was in sharp contrast to Tanzania's Arusha Declaration, and later, Uganda's Common Mans Charter. These ideological differences were immensely exacerbated by personal differences that emerged on the aftermath of Milton Obote's overthrow by Idi Amin in Uganda in 1971. President Julius Nyerere, the Chairman of the EAC Authority then refused to call an Authority meeting due to his personal differences with Amin. This resulted to a crisis over the management of Community institutions and accelerated the Community's eventual collapse in 1977. The rivalry between Amin and Nyerere saw then engage in border clashes that saw Amin overthrown with the assistance of Tanzanian forces in 1979.

Various factors have been cited for the collapse of the EAC in 1977. These can be summarised as background factors which inhibited the realisation of potential gains from regional co-operation; inadequate institutional structures created in support of regional arrangements; unequal distribution of gains arising from co-operation; the asymmetrical interdependence that characterised economic relations between the member states and between Africa and the rest of the world; and ideological differences and political volatility.²⁰⁹ The following is an analysis of these factors in detail.

²⁰⁸ Art. 3. Treaty for East African Co-operation. op. cit.

²⁰⁹ Mukandala, R. "Political Co-operation", in Perspectives on Regional Integration and Co-operation in East Africa. op.cit. pp. 87-106. p. 96.

4.4.1 Perceptions of unequal gains.

The common market and common arrangements established by the Community appeared to benefit Kenya more at the expense of Uganda and Tanzania owing to their low economic and industrial base. This reality directly negated the Community's stated primary objective to promote "the accelerated, harmonious, and balanced development and sustained expansion of economic activities, the benefits whereof shall be shared equitably"²¹⁰. The Common External Tariff (CET) that had been imposed by the Community had proved to cushion Kenyan industries against any forms of competition in the common market. The effect was that Uganda and Tanzania were forced to buy Kenyan products at higher prices than they would have had the CET not shut the door for similar products from outside the Community.

Worse still, for investors who wanted to beat the CET by establishing industries within the Community, the destination of choice was Kenya. This was because Kenya boasted of a large industrial base and an efficient and better infrastructure that reduced production costs. As Mazzeo has observed the, the net capital inflows into Kenya between 1969 – 1976 was about \$184.9 million compared to Tanzania's \$95.9 million and Uganda's \$31.0 million²¹¹. The effect of this was that Kenya continued to inordinately dominate community trade, posting high trade balances against its two partners. It further widened the industrial gap between them with Uganda's and Tanzania's, which were initially low, receding further into the doldrums while Kenya's grew lips and bounds.

4.4.2 Lack of Compensatory and Corrective Measures Redress the Economic Imbalances

Due to the widening economic and industrial gap, it was clear that if the Community was meet its objective of balanced development and equal distribution of benefits, measures had to be put in place to redress these economic imbalances. Two

²¹⁰ Preamble. Treaty for East African Co-operation. op. cit.

²¹¹ Mazzeo, D. "Problems of Regional Co-operation in East Africa". in Christian Potholm and Richard Fredland (eds) Integration and Disintegration in East Africa. op. cit. pp. 82-133. p.103.

types of measures are of relevance here – compensatory and corrective. Compensatory or equalisation mechanisms involve measures to redistribute benefits from those who are making gains to those suffering net losses. An example is the collection and sharing of customs levies according to a pre-agreed formula that favours those partners who have suffered losses. It also involves the institutionalisation of transfer taxes that provide revenue to the disadvantaged members as well as protecting growing their industries.

On the other hand, corrective measures aim to create favourable conditions for development and industrialisation at the poles of stagnation and thereby correct the underlying causes of unequal benefit and economic polarisation. The setting up of funds for industrialisation and development banks from which members derive benefits at inverse ratio to their initial contributions is a good example of such a mechanism. Harmonisation of fiscal incentives for foreign investors, a system of industrial licensing that discourages duplication and deliberate regional planning that involves the dispersal of industries equally to all regions of the community also fits into this mechanism²¹².

The establishment of the East African Development Bank (EADB) was created to implement these kinds of measures so as to arrest the rapidly growing economic imbalances. Sadly, it failed in this objective as its lending remained on a limited scale compromising its supposed role as catalyst for complementary industrial investment and development. Even the relocation of the headquarters of the common services, the decentralisation of some of their operations to other parts of the Community and the subsidization of parts of the services could not achieve a balance in benefits for the member states. On the contrary, the reality on the ground was that a big percentage of activities, investments and employment continued in Nairobi²¹³, a situation that further aggravated the inequality problem. A case in point was the East African Airways,

²¹² Olatunde Ojo. "Regional Co-operation and Integration". in Ojo *et al* African International Relations. op. cit. pp. 142-181. p.161-2.

²¹³ Mazzeo. D. "Problems of Regional Co-operation and Integration" in Potholm C. and Fredland R. (eds) Integration and Disintegration in East Africa. op. cit. pp. 82-113. p. 98.

whose activities in 1977 were estimated to originate and terminate almost exclusively in Kenya.

4.4.3 Inadequacy of Supranational Institutions

Although the diversity of the institutional machinery of the Community was impressive, the basic organs of co-operation remained intergovernmental. The Authority of the heads of state remained the supreme decision making institution; the ministerial councils were only advisory to the Authority plus giving executive direction to the Secretariat; the Legislative Assembly enjoyed limited jurisdiction; while the Common Market Council and Tribunal lacked real power to move co-operation forward. The vesting of all decision making power in the Authority circumscribed the Community bureaucracy. It also discouraged too bold initiatives for fear of being disavowed by their home governments.

However, other authorities have argued that it is not the institutional weaknesses *per se* that rocked the co-operation venture. Mazzeo for instance, has argued that the weaknesses displayed by the Community institutions were essentially defects of the operators of the supranational institutional machinery. In this respect he opined that the defunct EAC institutions favourably approximated those of other regional schemes that have worked like the EEC. The suitability of the institutions was best demonstrated by the new procedures devised to avoid budgetary approval and policy guidance when the Authority broke down in 1971. "The fact that the EAC survived this way for seven years was an indication of the suitability of the components of the institutional machinery, and the commitment and ability of officials like the Secretary - General and the East African Ministers".²¹⁴

Mazzeo concludes that the collapse of the Community was instead a consequence of "the personalisation of power in the Authority" which increased the danger of instability and transformed personal rivalries into national and intra-regional conflicts²¹⁵. Personalisation of power and the decision making process enabled each

²¹⁴ Ibid. p. 93.

²¹⁵ Ibid.

head of state by an act of caprice to determine the fate of the Community. Particularly President Nyerere's refusal to call an Authority meeting on the basis of his personal dislike and avowed unwillingness to sit on the same table with Uganda's Idi Amin can be explained in these terms. Be it as it may, it is also true that the institutional machinery had serious flaws that could not allow it to intervene to forestall the eventual break-up of the Community.

4.4.4 Ideological Differences and Economic Nationalism

There is no dispute that there existed an increasing ideological difference between the three member states. Tanzania and Uganda before the Amin era increasingly followed a socialist path, while Kenya remained avowedly capitalistic. Whether these ideological differences were a cause or effect of the economic polarisation wrought by the economic and industrial imbalances is not very clear. But what is apparent is that the pursuit of these divergent ideological policies appeared to have consequences, which magnified the inherent stresses hence accelerating the speed to the eventual collapse of the Community. Socialism resulted in serious socio-economic disruptions in Uganda and Tanzania, while capitalism, albeit dependent capitalism, ostensibly accounted for Kenya's socio-economic growth and political stability²¹⁶ ..

The stronger industrial and economic base of Kenya enabled it to attract more and more external investment and to exploit with a measure of success the economic opportunities that the Community offered. The political instabilities in Uganda increasingly ensured that the government there was more inward looking seeking to consolidate power and to repress opposition. This was especially true of the Amin era and therefore the fixation with security made sure that the government never had the opportunity to exploit the openings availed by the Community. In Tanzania, the weak economic base and the prevalent socialist ideology made external investors reticent and its capacity to exploit Community opportunities was low. For example, while Kenya took advantage of the prevailing circumstances and developed its tourist trade, Tanzania's tourism industry on the other hand stagnated and even declined. It is this

²¹⁶ Olatunde Ojo. "Regional Co-operation and Integration". in Ojo *et al* African International Relations. op. cit. pp. 142-81. p. 168.

widening economic gap and regional stresses that soon came to be explained and couched in ideological terms. Tanzania was to ridicule Kenya's stable growth as based on a "man-eat-man" philosophy and Kenya was to retort that Tanzanian socialism was driven by a "man-eat-nothing" philosophy²¹⁷. Tanzania moved to insulate its markets by closing its common borders with Kenya to prevent the intrusion of 'bourgeois capitalist values and decadence'.

In this way therefore, it is demonstrated that it was not ideological inclinations *per se* that led to the break-up of the Community. It was the widening economic gap, resulting in economic nationalism that structured, gave content to and reinforced the ideological differences. It was the economic nationalism amongst the member states that intensified and hardened ideological attitudes and differences. As Hazlewood has pointed out, it would therefore be a 'conclusion of despair that mutually beneficial co-operation requires a close similarity of social and political outlook'²¹⁸.

4.4.5 Influence of External Factors

Multinationals and their subsidiaries took advantage of Kenya's initial economic and industrial advantage to extract generous concessions on further foreign investment, and then tried to service the regional market from plants established in Kenya²¹⁹. The close relationship that developed with these foreign partners, especially with British, American and West Germany multinationals were viewed as a more attractive option by Kenyan business than the Community as they increased prospects of the growth of export rather than import substitution industries. This scenario was replicated in Tanzania not only with Western multinationals but also with Socialist China. The ensuing competition extended to regional partners, external markets for agricultural produce, foreign skills and technology. This had three main consequences.

²¹⁷ Ibid. p. 169.

²¹⁸ Hazlewood, A. Economic Integration: The East African Experience. op. cit. p. 137.

²¹⁹ Mutharika, B.W.T. Multinationals in Regional Integration: The African Experience. The African Review 5(4), 1975. pp. 18-41. p. 27.

One. disparate conditions relating to tax incentives, patent laws, labour conditions, and foreign exchange privileges were created. The effect of these was that they 'impeded the co-ordination and harmonisation of national development plans with respect to external resource procurement so essential for Pan-African economic integration'²²⁰. The duplication of plants within the Community benefited the multinationals because it was only they that were able to set up uneconomic plants enjoying protection from within by a warped up tax system and from extra-regional rivals by the CET. These inefficient mini-plants further undermined the realisation of the economies of scale, which is one of the principal justifications for the establishment of customs unions.

Secondly, inefficient production meant high production costs resulting in exorbitant prices for the finished goods. This, plus the natural proclivity for the multinationals to inflate prices explain why products manufactured in Africa are notoriously more expensive than imports from elsewhere. The multinationals are able to push prices up through the control of supply and demand to maximise profits at the expense of the host countries. For instance the inflated prices for imported machinery worsened the balance of trade of Tanzania to the benefit of Kenya. Tanzania acted to conserve its foreign exchange by slapping a ban on intra-community imports of largely consumer products manufactured in Kenya and stopped transferring funds to the headquarters of the Community corporations²²¹. This further exacerbated the strains and stresses between the member states making the eventual break-up of the Community inevitable.

Lastly, the cutthroat competition that ensued between the member states resulted in what has been called 'intra-imperialist rivalry'. This led to the creation of *de facto* zones of influence, which in turn altered the 'strategic image' of the partners, changing their perceptions of the balance of power amongst themselves heightening distrust and

²²⁰ Nnoli. Okwudiba. "External Constraints on Pan-African Economic Integration". Nigerian Journal of Internal Affairs. 4(1,2), 1978. pp.53-79. p.69-70.

²²¹ Olatunde Ojo. "Regional Co-operation and Integration". in Ojo *et al* African International Relations. op. cit. pp.142-81. p. 170.

suspicion. Kenya's Western connection added to its initial economic advantage. for example, elevated it to an African middle power, a 'sub-imperial state' with the capacity to undermine both Uganda's and Tanzania's national interests. Tanzania and Uganda, as a consequence, sought to compensate their loss of regional influence and power by seeking partnerships with other extra-regional actors. Tanzania established co-operation arrangements with China and Uganda went in for Arab finance and Soviet arms. This was to have serious negative ramifications on the viability of the Community.

On the whole, it is not possible to hold any single factor responsible for the collapse of the former East African Community, as the course of disintegration is a gradual one marked by an accumulation of grievances. Mounting frustrations influenced the calculus of benefits and costs that were expected to result from continued association. Certainly, the collapse of the East African Community was the accumulation and interaction of various factors which transformed the partners' perceptions of the costs of terminating regional co-operation in a such a way that disputes which might have been resolved in a more amicable way were allowed to precipitate its collapse. Moreover, the complex intertwining of political and economic factors, which necessarily leads to the long-term failure of regional schemes, was seen in the dissolution of the East African Community. But ultimately, in a climate of acrimonious accusations, it was the general lack of political will rather than any single crisis, which led to the eventual break-up.

4.5 Political Co-operation in the East African Community (EAC)

This is dealt with under two broad sub-titles. The conceptual discussions an analysis of how the current Community deals with the concept of political co-operation. It is observed that this is a major innovation from the defunct East African Community where political co-operation was not provided for. The second section presents a discussion of the various institutions that the East African Community proposes to sustain political co-operation amongst the three member states.

4.5.1 Conceptual Discussion

The East African Co-operation Development Strategy (1997-2000) identifies political co-operation as “a foundation for co-operation in the economic, social, cultural, and security fields, and ultimately as an end in itself.”²²² The question that arises is what political co-operation is supposed to entail. The functionalist strategy²²⁵ has made distinction between “power/political relations” and “welfare relations”. Welfare relations entail co-operation in such non-controversial sectors as communication, health, socio-cultural exchanges, and education. It is argued that the welfare field constitutes the most fertile area for developing peaceful co-operation with greater potential for spillover to include other sectors especially those of the controversial political type. On the other hand, power/political relations involve core national interests like security, defence, national diplomacy, and foreign policy. These are areas in which states are unwilling to relinquish control upon them to any form of supranational authority. This fits into the distinction made between “high’ and “low” politics by Stanley Hoffman:

Low politics is concerned with issues in which the interests of the participating units are calculable and which represent only a fraction of the total resources of such units. Central to high politics, on the other hand, are the critical interests of national diplomacy and strategy for which nations prefer self-reliance to any type of control by supranational bodies²²⁴.

On the basis of the relative importance of the issues and sectors in which co-operation takes place, Caporaso using the criteria of specificity and the political salience came up with four categorisations. These are: functionally specific, low political salience; functionally specific, high political salience; functionally diffused, low

²²² Par. 119. East African Co-operation Development Strategy (1997-2000). op.cit.

²²³ See Earnest Haas, The Uniting of Europe. London: Stevens and Sons, 1958.

²²⁴ Stanley Hoffman, Gulliver's Troubles or the Setting of American Foreign Policy. New York: McGraw Hill, 1968. p. 404.

political salience; and functionally diffused, high political salience²²⁵. Areas of the welfare field or 'low' politics according to Hoffman's dichotomy, like communications, health, culture and education are functionally specific and of low political salience. Economic co-operation, which is the centrepiece of many regional co-operation and integration schemes is supposed to fall into this category, but in the Third World experience, it is been made functionally specific but of high political salience. This is the reason why many regional integration arrangements are dogged by serious disagreements over economic issues. National diplomacy, foreign policy, defence and security straddle the continuum from functionally diffused, low political salience to functionally diffused high political salience. These are issues over which states never wish to cede control to regional organisations.

For instance, the experience of Western Europe has demonstrated that high politics issues hold the key to the success or otherwise of a community or any other kind of co-operation arrangement. The reliance of the functional strategy on spill over from the 'low' politics sector to the 'high' politics sector has been proved unworkable. This is because it is exceedingly difficult to separate politics from low politics sectors. Further, it has been realised that power relations are as much present in the welfare field as in other fields. So-called technical issues cannot be isolated from political issues, as they often require the making of choices, which invariably invites politics into the picture. For this reason, unless high politics is made subject to supranational mechanisms via the economic spill over, the building up of a political community would merely be seen as an instance of interest group politics, of "domestic politics in the community", and as a continuing example of traditional interstate politics²²⁶.

Despite this problematic experience with the handling of political issues in the quest to build communities, the Treaty for the Establishment of the East African Community

²²⁵ Caporaso, James. "Encapsulated integrative Patterns Vs Spill-over: The Case of Agricultural and Transport Integration in the EEC". International Studies Quarterly, vol. 14, no. 4, 1970, pp. 350-82, p. 368-9.

²²⁶ Stanley Hoffman. "Discord in Community: The North Atlantic Trade Area as a Political System", in F. Wilcox and H.F. Haviland (eds). The Atlantic Community: Progress and Prospects, International Organisation, vol.17, no. 3, Summer 1963, pp.2-17, p.11.

provides for the 'the development of policies and programmes aimed at deepening co-operation among the partner states in political, defence, security and other fields for their mutual benefit'. The end product of the process is the establishment of a political federation in stages beginning with a customs union, then a common market and lastly, a monetary union²²⁷. The political federation is to be achieved through the establishment of common foreign and defence policies. Among the objective of the common foreign and defence policies are measures to safeguard the common values, fundamental interests and independence of the Community; the strengthening of the security of the Community in all ways; the development and consolidation of democracy, the rule of law, and respect for human rights and fundamental freedoms; and the promotion of co-operation at all international fora²²⁸. Generally, the promotion of peace, security and good neighbourliness are deemed *sine qua non* to sustaining the necessary conducive environment for social and economic development within the Community.

The fundamental principles to guide political co-operation are friendship, solidarity and good neighbourliness among the three East African countries; the respect of state sovereignty and national integrity, non-interference in the domestic affairs of states, peaceful co-existence among nations as well as peaceful settlement of regional and international disputes; and the maintenance of regional peace, stability and security²²⁹. The prominence that has been given to political co-operation in the current initiative represents an important innovation and hence a radical departure from the provisions of the defunct East African Community. In the Treaty for the East African Co-operation (1967), the matter of political co-operation was not provided for, nor was it even mentioned unless it is assumed that it was included among the "other relations" provided for in Article 2.1. This development could be perhaps an acknowledgement that the growth of the Community can only be assured if issues of the 'high' politics category are integrated in the process of community building.

²²⁷ Article 5.1 and 2. Treaty for the Establishment of the East African Community. op. cit.

²²⁸ Ibid. Article 123.1 and 3.

²²⁹ Par. 121. East African Co-operation Development Strategy (1997-2000). op.cit.

The paradox is that while almost all the co-operation documents overplay the role of political co-operation as the foundation of the federative process, it is not established as a fundamental principle of the Community. Related to this, almost all the fundamental principles of political co-operation in the Community appear to work against the very ultimate principle of establishing an East African political federation. Friendship, solidarity and good neighbourliness; the respect of national sovereignty and integrity, and non-interference in the domestic affairs of states, for example, all appear to be aimed at consolidating and entrenching the nation state and hence the *status quo* rather than easing the introduction of a new state – the Federal State of East Africa. It should be recognised that the linking of economic and political fate, which greater mutual exposure through the creation of a community entails, requires that in some fields national autonomy and sovereignty has to be abandoned in favour of joint action. Therefore some of these principles must clearly be made relics of the past if the Community is to have a life of its own, and this calls for the commitment and will of the political actors involved.

4.5.2 Institutional Issues

The current East African Community represents a qualitative improvement on the defunct EAC in several areas. Political co-operation, which has been identified as fundamental to the growth of the Community, is to be sustained by the Heads of State Summit; the ministers responsible for foreign affairs; ambassadors and high commissioners; provincial / regional / district authorities; and the national parliaments²³⁰. The heads of state Summit is to sustain political momentum for co-operation and to provide the required vision to guide community building. While the Council of Ministers reports to it on the progress made towards the realisation of the political federation, it is the Summit that is vested with the power and responsibility to initiate the process of the formation of the Political Federation of East Africa by directing the Council to embark on the task. This may entail an order for a study to be made by the Council on the progress towards political federation²³¹. In addition, it is

²³⁰ Ibid. Par. 122.

²³¹ Article 123.6 and 7, Treaty for the Establishment of the East African Community, op. cit.

the responsibility of the Summit to review the state of peace and security in the region since these are considered crucial to the realisation of the objectives of the Community.

The Ministers responsible for Foreign Affairs enjoy a very special responsibility to steer East African political co-operation. They are called upon to meet regularly to consult and agree on how to discharge their obligations, not just in regard to the requirement to promote the new vision of the East African Community, but also in pursuit of their responsibility for the management and conduct of the Community's foreign affairs²³². They should consult and meet on regular basis to assess the political situation prevailing in the region and device a joint common position on foreign policy²³³. Apart from these, the Foreign Affairs Ministers preside over a veritable institutional structure that links the Community to the rest of the world. This includes the Permanent /Principal Secretaries for foreign affairs at home and the Ambassadors and High Commissioners serving in missions abroad. The Principal /Permanent Secretaries responsible for foreign affairs are the chief executives of their ministries and therefore the Ambassadors and High Commissioners are directly answerable to them.

Like the Ministers responsible for Foreign Affairs, the Ambassadors and High Commissioners of the member states, 'wherever they are' are required to consult on a regular basis to harmonise their countries' positions on matters of interest to the East African Community²³⁴. The objective is to develop an East African position on all issues of foreign policy and to engage in concertation especially at multilateral missions like the UN in New York and Geneva, the EU in Brussels, the OAU in Addis Ababa and London. The heads of mission are required to forge common positions on all agenda for deliberation at these international forums.

The Ministries of Foreign Affairs therefore serve as nerve centres in the conduct of Community diplomacy and foreign policy. For them to be able to discharge their

²³² Nyakvi, Antony and Rusiita, Earnest, The Promotion of East African Co-operation Abroad (Report), Secretariat of the Commission for East African Co-operation, Arusha: 1998, p.2.

²³³ Par. 124, East African Co-operation Development Strategy (1997-2000), op.cit.

²³⁴ Ibid. Par. 125.

obligations effectively and efficiently. there is need for both personnel and institutional capacity. In terms of personnel, the ministries should be able to post adequately trained and proactive individuals to serve in East African missions abroad. This is important, as the missions are the vocal points for the conduct of the Community's diplomacy and foreign policy and this, obviously requires the choice of individuals well suited to represent the Community effectively. This should also apply to the ministers responsible for foreign affairs and their permanent / principal secretaries.

In terms of institutional capacity, the ministries of foreign affairs should have at their disposal efficient mechanisms for the co-ordination of the Community's foreign policy. It is a requirement that the ministries be in a position to provide the best possible advice on any matter of interest to the Community to the heads of mission abroad. This can be possible, for instance, though the establishment of a specific department within the foreign ministries for the co-ordination of the Community's affairs. Nyakyi and Rusiita see the responsibilities of such a department to be:

Liaison with sectoral ministries on aspects relating to Foreign Affairs paying particular attention to the international situation vis-à-vis investments from either the donor community or private capital; be the channel of communication between the East African [Community] Secretariat and the diplomatic missions of the member states abroad; liaison with diplomatic representatives in the particular capitals; collecting and analysing information from missions abroad to channel it to the Foreign Ministry and sectoral ministries; and collecting information from sectoral ministries and channelling it to missions abroad.²²⁵

The Provincial / Regional / District authorities that are identified as having a role to play in East African political co-operation are those administrative units in border areas. These are also to consult regularly to enhance good neighbourliness in matters of common interest such as border security, the elimination of cross border livestock rustling and the management of refugees from outside the region²³⁶. The provision on the management of 'refugees from outside the region' is peculiar, as it does not seem to envisage the possibility of having to contend with intra-community refugees. While the region has for long remained a receptacle for refugees from endemic trouble spots

²²⁵ Nyakyi, Anthony and Rusiita, Ernest. The Promotion of East African Co-operation Abroad, op. cit. p.4.

²³⁶ Par. 126, East African Co-operation Development Strategy (1997-2000), op. cit.

like the Sudan, Ethiopia, Eritrea, the Great Lakes Region and Somalia, the recent influx of Tanzanian refugees from Zanzibar into Kenya due to government hostilities over a poll dispute clearly demonstrates that the Community needs to devise approaches to deal with intra-community refugees and the factors creating them.

Lastly, the National Parliaments of the member states are also a part of the Community's political co-operation institutional framework due to their central role in the ratification of instruments relating to the functioning of the co-operative activities. To foster popular participation in the activities of the Community, the national parliaments have a duty to liaise with the East African Legislative Assembly on all matters of relevance to the Community. This is to be done by the national parliaments, through their clerks, transmitting to the East African Legislative Assembly copies of all Community relevant debates and vice versa²³⁷. It is also envisaged that the co-operative and integrative energies of the national parliaments can be brought to bear on East African political co-operation through a consultative arrangement akin to a Joint Committee of the National Assemblies of the member states²³⁸.

In conclusion, it is evident that political co-operation is poised to take a central role in the growth or otherwise of East African co-operation in the years to come. Indeed, political co-operation has been identified as being the foundation upon which all other forms of co-operation among the three partner states will be based. The need to sustain political will and vision to forestall the disintegration of the East African Community like the defunct East African Community has seen the establishment of institutions for this purpose. These, as has been seen, include the Heads of State Summit, the Ministers responsible for Foreign Affairs, Ambassadors and High Commissioners, Provincial / Regional / District Authorities and National Parliaments. The Foreign Ministries appear to carry a heavy responsibility in the conduct of East African Community affairs both at home and abroad. Additionally, it has also been demonstrated that political co-operation is not new in East Africa, only that it had not

²³⁷ Article 65. Treaty for the Establishment of the East African Community, op.cit.

²³⁸ Par. 127. East African Co-operation Development Strategy (1997-2000), op.cit.

been institutionalised in the guiding documents in the earlier attempts like it has been done in the current set up.

CHAPTER FIVE

CRITICAL ANALYSIS OF ISSUES EMERGING FROM THE STUDY

5.1 Introduction

It has been demonstrated that regional co-operation and integration in East Africa is not a novel idea as co-operation schemes between the three East African countries have existed for the past one century.²³⁹ For this reason, the rejuvenated East African co-operation of the 1990s can be looked at as a case of old wine in new wine bags. The collapse of the East African Community in 1977 presents a major watershed in the quest for East African unity. Indeed, it pulled back the clock of co-operation that had been set in motion by the signing of the Treaty for East African Co-operation back in 1967.

Current global trends favour the creation of regional blocs so as to enhance bargaining power in the global market. For this reason, it is now a truism that almost every state in the international system belongs to one grouping or another. Some of the more established state groupings include the European Union (EU); the North Atlantic Trade Organization (NATO); the World Trade Organization (WTO) and the Oil Producing and Exporting Countries (OPEC). Sub-regional groupings closer home in Africa are the Economic Community of West African States (ECOWAS); The Magreb Union, and the Common Market for Eastern and Southern Africa (COMESA). Most recently moves towards closer co-operation for the three Eastern African countries of Kenya, Uganda and Tanzania have resulted in the establishment of the East African Community (EAC). Perhaps with these kinds of formations the realisation of the Pan-Africanist dream of a United Africa appears to be getting closer and closer.

This chapter seeks to present a critical analysis of issues emerging with respect to the study on the East African Co-operation in the 1990s. Three issues have been identified for this purpose. These are one, that economic considerations remain the *raison d'être* for the formation of the East African Community (EAC); second, that Community institution building has been done in a most haphazard manner resulting in an acute lack of coherence in the decision making process; and third, that political co-

²³⁹ See Chapter 1 for details of this

operation remains a dead letter in the Community and this will inevitably hamper community growth. The objective is to tie the loose ends and try to determine how the East African Community will affect the international relations, foreign policies and diplomacies of the three partner states of Kenya, Uganda, and Tanzania. It will consequently argue a case for enhanced political co-operation and harmonized foreign policies to bolster the chances of the success of the new Community. Further, it will present an analysis of the study hypotheses to demonstrate their accuracy and efficacy to the study.

5.2 Economic Considerations are the Main Motivation for the Establishment of East African Co-operation

Like all other regional co-operation arrangements the world over, economic considerations remain the *raison d'être* for the formation of the East African Community (EAC). The immense advances in technology and the information age have created an increasingly intertwined international system driven by supply and demand pressures – what is popularly called ‘a global village’. The successes of the European Union (EU) with comparatively large states and vibrant economies have presented a compelling reason for increased co-operation amongst small poor countries especially those in Africa. The objective is to create large regional economic blocs that will be able to compete favourably with other international actors in the global market. The pooling of resources by the participating states, which co-operation entails, will help them to effectively confront socio-economic challenges which each one of them acting in isolation would have found insurmountable. The ultimate goal is the improvement of the living standards of their citizens, and this assumes greater urgency given the fact that close to half of the world’s poor live in Africa.

For this reason, economic issues have inordinately taken the centre stage in the negotiations for the creation of regional co-operation arrangements. Further, economic concerns have also remained an enduring point of disagreement amongst the co-operating states at times obstructing progress towards the establishment of economic communities. This is true especially in the specific case of East African Co-operation. For example, from the formation of the Permanent Tripartite Commission in November 1993 economic disagreements slowed down the progress towards community formation. The contentious economic issues included, the establishment of the customs

union; the date for the cessation of imposition of new tariffs; the period relating to claims for duty drawbacks; the right of establishment under the common market; granting of air traffic rights, the free movement of labour, capital and persons; and the right of establishment and residence within the community²⁴⁰.

Indeed, it was only until November 1999, seven years later that the East African Community was established on the formal signing of the Treaty for the Establishment of the East African Community. Even then, these issues were not fully resolved as they were left out for further negotiations²⁴¹. The ratification process also suffered a similar fate with Tanzania, the last member state to ratify the treaty, depositing the ratification instruments as late as the end of the year 2000. As Hanink and Owusu have demonstrated through their studies of ECOWAS, economic co-operation amongst states whose citizens have little purchasing power leads to trade stagnation. The fear amongst the member states of potential economic disruptions and long-term economic decay explains the slow process of community formation.

Moreover, the reluctance on the part of Tanzania and Uganda to consummate the co-operation relationship with Kenya has historical underpinnings. During the defunct EAC, the two countries harboured strong suspicions that Kenya was reaping more than its fair share of benefits and are therefore keen to avoid a repeat of that experience²⁴². The only hope for East African co-operation to get out of this morass as Ojo has observed is for Kenya, as the core state in the region, to rise up to the occasion and be willing to make certain sacrifices in order to blunt the sensitivities to potential economic inequalities in the gains accruing from integration, a role that Nigeria has played well in the Economic Community of West African States (ECOWAS):

Its intensive and extensive diplomatic activities, its large share of financial contributions and voluntary expenditures, its investments in joint ventures, and its granting of many concessions towards the implementation of the terms of

²⁴⁰ See Joint Report. "EA Stumbles on its first step to Integration" The East African, July 26-August 1, 1999, p.4

²⁴¹ See Chapter Two for details.

²⁴² Ibid.

the Treaty agreements all demonstrate Nigeria's commitment to the success of ECOWAS²⁴³.

The level of commitment that Kenya will demonstrate will to a great extent determine the success or otherwise of the East African Community. Obviously, like Nigeria, this commitment will ultimately be demonstrated by how many potential advantages Kenya is willing to forego, how many sacrifices it is willing to make and how many concessions it is willing to give Uganda and Tanzania in order to assuage their fear of economic dominance so that the co-operative agenda can move forward. This is an issue that Kenya would do well to explore urgently.

5.3 Haphazard institution Building and Lack of Effective Decision Making Procedures

The main institutions and decision-making organs of the East African Community (EAC) are the Summit; the Council of Ministers; the East African Court of Justice; the East African Legislative Assembly, and the Secretariat²⁴⁴. These are the institutions that are charged with the responsibility to steer East African co-operation to greater heights. While it is expected that these organs should operate within a coherent framework with clear mandates to avoid duplication while at the same time complementing one another in the decision making process, an analysis of the Treaty provisions with respect to this reveals glaring flaws.

An example of the lack of coherence in the Community decision-making process is to be found in the workings of the Council. In its exercise of the legislative powers vested in it by the Treaty for the Establishment of the East African Community, it is provided that it shall make regulations, directives and decisions which shall have a 'binding effect on the partner states, or institutions of the Community except the Summit, the East African Court of Justice and the East African Legislative Assembly'²⁴⁵. The effect of this provision is that the decisions of the Council are only binding on the Secretariat, the Co-ordination Committee and the Sectoral Committees.

²⁴³ Olatunde Ojo. "Regional Co-operation and Integration." in Ojo *et al.* African International Relations. London: Longman. 1985. pp. 142-181. p. 175-6

²⁴⁴ See Chapter 3. Treaty for the Establishment of the East African Community. op. cit.

²⁴⁵ Article 16. Treaty for the Establishment of the East African Community. op. cit.

This is a very serious flaw because a decision that is not binding on other important organs of the Community like the Summit, the Assembly and the Court may run into serious problems during the implementing process. For instance in the EU, the co-decision and co-operative procedures require continuous consultation amongst the key decision making institutions like the European Council, Parliament and Commission. Because of this approach, all the institutions effectively take part in the decision-making process resulting in policy decisions that are binding on all Union institutions and the member states. The East African Community will do well to borrow a leaf from this mode of policy-making coherence.

The institutionalisation of consensus as a decision-making procedure in the East African Community underlies the main problem in decision-making. As has been observed elsewhere, decision making at the Council and the Summit on the basis of consensus bestows a power of veto on all the member states. What this means is that even when majority representatives of the Summit or the Council support some important policy decision, the one dissenting vote serves to paralyse all efforts towards this end. For the Council, things are even worse because so long as one member has entered a reservation on some matter, it cannot even be debated and if such a matter is referred to the Summit for final resolution and a Summit member dissents, the policy however good it was must²⁴⁶.

This brings out the real need for the establishment of decision-making procedures that will ensure that while the views of the majority are respected, the positions of the minority are also heard. In the case of the EU, introducing majority voting at the Council resolved this problem. Perhaps the East African Community will do well to borrow from this or at least establish some procedure that will operate along the same lines. Also given the small number of members involved in the East African Community, perhaps a move to widen its membership may be a step forward because this may ease the decision-making process. It has been observed that when a significant majority in any regional bloc votes for a policy, this tends to whip any of the dissenting members to line. But the primary objectives of all this should be to enhance faster

²⁴⁶ See Chapter Three for this argument

decision-making and avoid all procedures that will tend to bog or slow down the process.

The efficacy of any decision-making process is normally a function of how well the principle of separation of powers is operationalised. With respect to the organs of the East African Community, it will appear that this has not been done well. For instance, the Assembly, which is supposed to be the main legislative organ, is at the same time subordinated to the Summit and the Council. With respect to legislation, it is provided that any bill passed by the Assembly has to get the Summit's assent for it to become community law. The paradox is that the Summit is again vested with the power to deny a passed Bill assent and refer it back to the Assembly for reconsideration. Even when the Assembly resubmits such a Bill, the withholding of assent by any one member of the Summit condemns the whole Bill to the dustbin notwithstanding the views of the Assembly in supporting such a Bill.

The effect of this is that the East African Assembly will practically be working at the whims of the executive and this necessarily discourages any initiative to come up with proposals and policies, which the Community executive may not like but which are clearly to the benefit of East African Community. Perhaps as has been argued in Chapter Three, there is need to have a provision allowing the Assembly to pass such a bill that the Summit has denied assent by a two-thirds majority if the Assembly is convinced of its benefits to the Community. Without this kind of provision, it is apparent that the Assembly might never be able to discharge its obligations freely without undue influence from the executive.

Worse still, one of the executive organs, the Council is also vested with legislative powers. This is enshrined in Article 14 (5), which provides that "the Council shall cause all regulations and directives made or given by it to be published in the Gazette; and such regulations or directives shall come into force on the date of publication unless otherwise provided for". The effect of this is that if the Assembly becomes too independent for the executive to control, the Council can invoke this provision and proceed to retrench the Assembly by usurping all legislative powers. But if it is assumed that the Assembly will work as it is supposed to, the long shadow of the executive still clouds its way in that even the initiation and submission of Bills to it has to be done by the Council. A lot of fine-tuning needs to be done to give the Assembly

some teeth and a clear mandate so that it can do its work without undue pressure. This kind of reform must necessarily start with the procedure for the election of Assembly members. The current election by the national parliaments of the member states should be replaced by a system of common suffrage so as to give the people of East Africa the right to determine who represents them at the East African Assembly. This will also encourage initiative among the members of the Assembly, as they will now be responsible and answerable to the electorate.

The same problem can be said of the Secretariat. According to the Treaty, the Secretariat is enshrined as the executive organ of the Community. In this respect, its responsibilities are to initiate and implement Community programs. After decisions have been made by the Summit, Council or the Assembly it is the Secretariat that must implement them. But then, this mandate is not unfettered, as the Secretariat has to do this through the Co-ordination Committee. The fact that the Co-ordination Committee is made up of permanent secretaries in the service of the governments of the contracting parties serves to demonstrate how the governments are obsessed with the desire to control the Secretariat. This committee of government functionaries is supposed to work as a sieve to decide what can be enacted into law or passed as a community policy and still retain the last word as to its implementation. In effect this makes the Secretariat a lame duck that does not have any actual work to do. If one has to justify the large budget that goes into running the Secretariat, then a lot needs to be done to give it some form of independence in the discharge of its responsibilities.

As for the East African Court of Justice there are several cases the world over where the executive has manipulated the judiciary. For example in Kenya in the late 1980s at the height of the state's hunt for dissidents, the judiciary was used to punish and incarcerate individuals on trumped up charges. Therefore the test of the efficacy of the regional Court will be demonstrated by how independent it can be from the Community's executive. For this purpose, perhaps more powers should be accorded to the East African Legislative Assembly in the process of the appointment of the judges. The *de facto* powers given to the Summit to appoint the judges should be reduced so that the Assembly can be actively involved to vet and approve such appointments. This will ensure that the judges owe their allegiance directly to the people of East Africa and not the Summit. Another test that the East African Court of Justice has to pass is

that to do with whether the national courts in the three partner states will respect its decisions. Kamau Kuria²⁴⁷ has proposed that for this to be done effectively the judicial system in the Community needs to be synchronised and the East African Court of Justice be transformed into the final appellate court for all criminal and civil matters. If such a recommendation were to be implemented, it will mean that all the courts in the Community will be directly under the East African Court of Justice.

5.4 Political Co-operations and the Case for Harmonisation of Foreign Policies in the East African Community

The ultimate objective of East African co-operation is the creation of a political federation through a customs union, a common market, and a monetary union. Political federation presupposes that the co-operating groups or states first identify common objectives and areas that will require common action. But at the bottom line each of the contracting parties remains sovereign in its own territory and only comes into contact with the other contracting parties when dealing with the agreed areas of common action²⁴⁸. The federative process in essence strives to discourage the use of the power of unilateralism in favour of joint decision-making and action. This kind of arrangement must obviously operate on the federal model with the issues agreed for joint action addressed by federal organs while domestic issues are handled by the national governments.

As has been argued in Chapter Four, federation means joint planning especially in respect to the agreed areas of co-operation. Greater co-operation also means that the dividing line between domestic and international affairs gets increasingly blurred making foreign issues to assume domestic significance:

We are beginning to understand that togetherness does not mean harmony, but conflict, but that we must accept this conflict not as a sign of failure, but as evidence that, as the border line between international and domestic policy-

²⁴⁷ Sec. G. Kamau Kuria. "The East African Court of Justice as the Precursor for the Final Appellate Court of the Federal State of East Africa." in Institutional Framework for an East African Federation. EALS. Arusha. 2000. pp. 35-49.

²⁴⁸ See chapter 5 for the argument on this

making becomes blurred, international economic diplomacy takes on the character of domestic politics.²⁴⁹

The stresses and strains of closer co-operation are not new to East African co-operation. Indeed, the observation that greater co-operation implies more conflicts is increasingly being proven right by the disagreements that the federative process in East Africa has had to contend with. The contracting parties are required to come up with cogent ways of solving these conflicts to ensure progress in the East African Community, and this requires sustained political will and commitment on the part of the member states. Again, it has been demonstrated that the prevalence of political will is a function of a cost-benefit calculus. For this reason, the proposals for greater co-operation must be formulated in such a way as to preclude zero sum games to ensure that each party goes away with something from the negotiating table.

Political will begins from the willingness to be incorporated into a regional grouping and the ability to honour all obligations with respect to such agreements *pacta sunt servanda*. Since initially each one of the states coming together to form a community was pursuing its own national interests, co-operation means that the states must now identify areas that require common action. This in effect changes the balance of power amongst the members and there are new perceptions of the community interests that the state parties must now pursue together. A harmonisation of the foreign policies of the member states becomes very necessary. Essentially, the objective should be to pursue similar policies within the community and towards other international actors. An East African position on all issues should evolve so that the three member states to talk in one voice on any issue of international concern.

5.5 Analysis of the Study Hypothesis

In the course of the study, various evidences bearing on the study hypotheses have been produced as presented here below.

²⁴⁹ Theo Peeters and Golfgang Hager. "The Community and the Changing World Order". in Max Khunstramm and Golfgang Hager (eds). *A Nation Writ Large? Foreign Policy Problems Before the European Community*. London: Macmillan Press. 1973. pp.28-61. p.39

I: The success of the East African Community will to a great extent depend on the balancing of gains accruing from the Community amongst the member states.

The study has clearly established that the main reason why many regional co-operation and integration ventures have stagnated making the dream of federation remain forever unrealisable is the question of unequal gains. First, no state will be willing to join with others in a co-operative arrangement if all it expects is a subordinate position. For this reason sovereign equality among the contracting parties must not only be overemphasized, but it should also be extended to the sharing of benefits accruing from the co-operation scheme.

For the East African Community, the need to balance gains between the contracting parties is a very critical matter with a historical precedent. It is on record that the primary reason why the former Community crumpled in 1977 was the perception of unequal gains with Kenya being suspected to be reaping more than its fair share of benefits from the Community at the expense of Uganda and Tanzania. Some of the areas from which Kenya was viewed as deriving more benefits than Uganda and Tanzania included; employment in joint ventures especially the East African Airways which almost employed exclusively from amongst Kenyan nationals and the common external tariff which appeared to protect Kenyan industry to the detriment of infantile industry in Uganda and Tanzania.²⁵⁰

Indeed the question of unequal gains remained one of the most pronounced obstacles to the signing of the Treaty for the Establishment of the East African Community as Uganda and Tanzania needed certain guarantees to safeguard their economic interests on the formation of a common market. For this reason, it is pertinent that the contracting parties in the East African Community think through this issue and work out measures to ensure that the benefits of co-operation are shared equitably. Indeed, this provision is even enshrined in the Treaty for the Establishment of the East African Community²⁵¹. One instrument that may be explored so as to fulfil

²⁵⁰ See Chapter I

²⁵¹ See Preamble. Treaty for the Establishment of the East African Community. op.cit.

this condition and hence blunt any sensitivities to the problem of unbalanced gains could be to establish a fund to compensate any parties that might appear to be losing.

II: The form of the institutions of the East African Community must conform to the functions they are to perform to keep the economies of the East African region competitive in a rapidly changing world economy.

It is clear from the Treaty that the three partner states put a high premium on economic co-operation. For this reason, it will appear that East African co-operation to a large extent is "trade driven". Obviously then, it is imperative that the form of the Community institutions must be such that they support this objective. The various decision-making organs that are established must be able to discharge their mandates efficiently and effectively so that the goal of enhanced trade between the three countries and with the rest of the world is realized. A few flaws have been observed in the institutionalisation of these organs especially the East African Court of Justice and the East African Legislative Assembly. These need to be rectified so that these organs can be able to discharge their mandates properly for the benefit of greater East African co-operation.

III: Uncoordinated Foreign Policies amongst the three East African countries remain the major obstacle frustrating the growth of East African co-operation.

The study has established that for any number of states to successfully cooperate and integrate their economies, there is need for the synchronization and harmonization of foreign policies to promote joint action. The main objective for co-operation schemes is to deny individual governments the power of unilateralism in favour of joint decision-making especially in the areas agreed upon. As the case is currently, the East African countries are all pursuing divergent policies. For example Uganda is an adventurist to the extent of being a party to the Democratic Republic of Congo conflict that has been festering for some time. Kenya and Tanzania on the other hand are more or less conservative. Clearly there is need for policy harmonization so that there develops an East African position on all issues. Even within East Africa itself, there is need for the respect of such important foreign policy planks as human rights, the respect for the rule of law, transparency and accountability. This is only possible if

there is a sustained political will to see this kind of rapprochement emerge³⁴². If this ever happens, it is possible that the three countries will be able to cut back on further spending especially on establishing separate foreign missions abroad as one can represent the three states while at the same time augmenting the East African Community's powers of negotiation at the international level.

³⁴² See Chapter 4

CHAPTER SIX

CONCLUSIONS AND RECOMMENDATIONS

6.1 The Achievements of the Study

The preceding five chapters have posited an analysis of East African Co-operation, from 1993 to 1999. Through the study, it has emerged that regional co-operation and integration efforts are not a preserve of the 1990s when the East African Co-operation was launched but rather straddle the whole of the last one century. Therefore, it can be asserted that the current efforts at East African unity are borne of the disastrous failures of the earlier ventures.

Consequently, the question that one would ask is whether the objectives of the study were realised. The overall objective of the study was to investigate process towards the establishment of the East African Community. The study traced the development of East African co-operation from the beginning of the century when the Kenya - Uganda Railway was built to November 1999 when the Treaty for the Establishment of the East African Community was signed. In the pre-independence period the study found that the main landmarks of the process were the East African High Commission (EAHC) that was formed in 1948 and its eventual transformation to the East African Common Services Organisation (EACSO) at the dawn of independence in 1961.

After independence efforts towards East African unity led to the establishment of the defunct East African Community at the signing of the Treaty for East African Co-operation in 1967. The golden age of East African co-operation met its exponential in 1977 when the East African Community crumpled amidst irreconcilable personal and political differences amongst the leaders of the three states and serious acrimony over the sharing of gains accruing from the Community. The study traced the foundations of the current East African co-operation to Article 14.02 of the 1984 East African Mediation Agreement which tied the three East African countries of Kenya, Uganda and Tanzania to explore areas of future co-operation and make the necessary arrangements to realise this at the opportune time. During the co-operation years, the study provided a detailed analysis of the Permanent Tripartite Commission for East African Co-operation, the Secretariat for the Commission for East African Co-

operation, and the treaty making process. Therefore the East African Community is the result of a long tenuous process.

The first specific objective was to determine the nature of institutional arrangements and decision-making structures that will be compatible with aspirations of East African co-operation. With respect to this, the study analysed all the community institutions to discern their strengths and weaknesses. The institutions analysed are the Summit, the Council, the East African Legislative Assembly, the East African Court of Justice, the Co-ordination Committee and the Secretariat. Making comparisons with correspondent institutions of the EU, the study made recommendations on how the East African Community institutions can be empowered to further the aims of co-operation in the region.

The other specific objective of the study was to determine the role of harmonised and co-ordinated East African foreign policies in quest for East African unity. The study found that political co-operation amongst the three countries has been given immense emphasis, a realisation that unless issues of 'high politics' are made subject to common action and joint decision making the dream for the establishment of an East African federation which is the ultimate goal of East African co-operation would forever remain unattainable. Harmonisation of foreign policies becomes critical, as the Community must strive to evolve an East African position on all issues of concern in the international system. On the whole, it can therefore be argued that within the limited parameters set by the study hypotheses, the objectives of the study were achieved.

6.2 Conclusions

The establishment of East African Community brings close the realization of a United States of Africa as propounded by African nationalists at the dawn of independence. It also provides hope that somehow Africa may soon be able to put its act together to find lasting solutions to its myriad endemic problems. However some conclusions were reached. The first one is that the institutions established by the East African Community are feeble and therefore lack the requisite capacity to drive East African co-operation forward to realise its stated ultimate goal of an East African Federation. Secondly, the study has found that unless the three East African

Community member states find an acceptable formula that will ensure that the benefits accruing from the Community are shared amongst them equitably, the ghosts of the defunct East African Community will inevitably return to haunt the current initiative. And lastly, the study found that the harmonisation and co-ordination of the foreign policies of the three member states holds the greatest hope for the Community to achieve its objectives.

6.3 Recommendations from the Study

The study makes two recommendations in terms of areas that require further research. One, the institutionalisation process of the East African Community has been done in a most haphazard manner. The result is that decision-making cannot be done within a coherent framework that will ensure that sound community policies are formulated and implemented effectively and efficiently. The study therefore recommends further research on this area that will require borrowing of experiences from other regional co-operation and integration organisations that are adjudged as success stories like the European Union (EU).

Secondly, more research is required in the area of political co-operation. The harmonisation of foreign policies, which the study has found to hold the key to the success or otherwise of the East African Community, requires that the member states be willing to look at the principle of sovereignty afresh. Again the EU is way ahead in this area and therefore further research is required to provide policy approaches on how this can be institutionalised in the East African Community.

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