

UNIVERSITY OF NAIROBI

**THE ROLE OF NATIONAL INTEREST IN REGIONAL
INTEGRATION: THE CASE OF KENYA IN THE EAST AFRICAN
COMMUNITY 2000-2007**

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DECLARATION

I **Wandia Mary A.W** hereby declare that this dissertation is my original work and has not been submitted for a degree to any other University.



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November 7, 2008

DATE

This project has been submitted for examination with my approval as university supervisor.

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Dedication

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Abstract

Since the establishment of the new EAC, Kenya has on several occasions failed to comply with the EAC Treaty to safeguard its own national interest. This study seeks to investigate the role of national interest in regional integration by specifically evaluating the impact of Kenya's national interest on regional integration in the EAC.

In review of theories of integration, the study notes that the theories of integration have managed to account for some aspects of regional integration in Africa and failed to account for others. Theories of integration are relevant to the integration process in Africa and East Africa in particular, but they do not sufficiently describe the events thereof. The study establishes that there are tensions between national interest and integration in Africa. It further establishes that national interest has a negative impact on regional integration in the EAC and that the realist theory focus on national interest and survival may be the key to understanding why functionalism and neo-functionalism led regional integration has failed in Africa.

By cross-examining Kenya's adherence to the EAC Treaty, the chapter concludes that Kenya has in some instances prioritized its national interest over regional interests. It further noted that in so doing, Kenya hampers the attainment of the national interest of the other countries in the community and the overall goal of regional integration in the EAC.

The study establishes that national interest could destabilise regional integration unless it is subordinated to regional interests. Thus, states have to come up with ways of managing interests in order to achieve their integration goals. The study identifies possible ways of managing national interest to enhance regional integration: starting with a political federation in the EAC would minimize the current divided loyalty –between national and regional interests; involving citizens, addressing the issue of multiple memberships to regional integration schemes and setting up mechanisms for conflict resolution amongst others.

Abbreviations

CEMAC	Central Africa Monetary Union
CET	Common External Tariff
CFSP	Common Foreign and Security Policy
CHOGM	Commonwealth Heads of Government Meeting
COMESA	Common Market for East and Southern Africa
CP	Comparative Politics
CU	Customs Union
EABC	East African Business Council
EAC	East African Community
EACJ	East African Court of Justice
EACSO	East African Common Services Organization
EACT	Treaty for the Establishment of the East African Community
EADB	East African Development Bank
EALA	East African Legislative Assembly
EALS	East African Law Society
EMU	Economic and Monetary Union
EPAs	Economic Partnership Agreements
ESAMI	Eastern and Southern African Management Institute
EU	European Union
FDI	Foreign Direct Investment
FTAs	Free Trade Areas
IR	International Relations
JKML	Jomo Kenyatta Memorial Library
KANU	Kenya African National Union
MDL	Musoma Dairy Limited
MP	Member of Parliament
NARC	National Rainbow Coalition
NGOCEA	NGO Coalition for East Africa
NTBs	Non-Tariffs Barriers
ODM	Orange Democratic Movement
PTC	Permanent Tripartite Commission for Cooperation
RECs	Regional Economic Communities
SACU	Southern Africa Customs Union
SADC	Southern Africa Development Community
UEMOA	West Africa Monetary Union
UK	United Kingdom
UN	United Nations
USA	United States of America
USSR	Union of Soviet Socialist Republics
WACH	West Africa Monetary Union

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CHAPTER ONE

National Interest and Regional Integration

1.0 Introduction

The revival of interest in regional integration and cooperation is a worldwide phenomenon, inspired by the success of the European Union. It also reflects a growing appreciation of the benefits derived from regional unity and cooperation in meeting the challenges posed by increasingly competitive world markets¹. Regional integration efforts in Africa have a long history dating back to the colonial period and an equally long history of floundering due to lack of political commitment and disagreements over compensation and distribution of benefits².

In recent years, a new momentum of integration has emerged in the continent. A number of factors explain this new emphasis on integration including: greater political will, globalisation and the attendant need to strengthen small economies and expand markets to avoid marginalisation, and the desire to achieve economic development³. In Africa, regional unity is seen as a possible solution to the continent's deep and prolonged economic and social crisis, at a time when private energies are waning thanks to the strengthening of civil society and the deregulation and privatisation of national economies, while continuing decline of state-imposed barriers to inter country flows paving the way for regional trade⁴. However, as Nyirabu argues, the unwillingness of

¹ R. Lavergne, 'Introduction: Reflections on an Agenda for Regional Integration and Cooperation in West Africa' in Real Lavergne (ed), *Regional Integration and Cooperation in West Africa: A Multidimensional Perspective* (Ottawa: IDRC and Africa World Press, Inc, 1997) p. 3

² N. Ng'eno, K (et al), *Regional Integratiqn Study of East Africa: The Case of Kenya*, KIPPRA Working Paper No. 9 (Nairobi: Kenya Institute for Public Policy Research and Analysis (KIPPRA), 2003) p. 1

³ Ibid. p. v

⁴ R. Lavergne, 'Introduction: Reflections on an Agenda for Regional Integration and Cooperation in West Africa' in Real Lavergne (ed), *Regional Integration and Cooperation in West Africa: A Multidimensional Perspective* Op. Cit. p. 3

governments to subordinate immediate national political interests to long-term regional goals or to cede essential elements of sovereignty to regional institutions is one of the biggest obstacles to regional integration⁵.

The East African countries have made a commitment to integrate their economies through the East African Community (EAC). The EAC is the regional economic community comprising of Kenya, Uganda, Tanzania, Burundi and Rwanda. Its headquarters are based in Arusha, Tanzania. The re-emergence of the EAC is rooted in the Treaty Establishing the East African Community⁶. The Treaty, signed on November, 30, 1999 entered into force on July 7, 2000 after being ratified by the three initial members-Tanzania, Kenya and Uganda. Since 2004, efforts have been directed towards fast tracking the achievement of a political federation by 2010. However, the report of the Fast Tracking Committee reports that fear of loss of sovereignty is an issue in the minds of the some members of the political elites of East Africa. The fear is that as a federation, the nation states would cease to have any meaningful powers; that they would be relegated to mere provinces within the federation⁷.

Tensions between national interest and regional integration in the EAC pose a challenge to the attainment of the political federation and the sustainability of the renewed integration efforts. Wanyoto notes that the mindset emphasizing national interests and positions rather than regional interests are holding up progress of regional

⁵ M. Nyirabu, 'Appraising Regional Integation in Southern Africa' *African Security Review* Vol. 13 No.1 (2004) p. 21-32: 27

⁶ East African Community, *Treaty Establishing the East African Community* (EAC Secretariat: Arusha, 2002)

⁷ EAC, *Report of the Committee on Fast Tracking East African Federation*, (EAC Secretariat: Arusha, 2004) p. 81

integration⁸. Katumanga argues that the EAC integration has been rationalised around principles such as the respect for territorial integrity of each state actor, friendship, the non-interference in the internal matters of each actor, the establishment of collective institutions for development, and the implementation of common defence and foreign policy. Yet the logic of cooperation based on non-interference in internal matters of other states more or less reinforces the nation-state while constraining meaningful integration. While these principles are good for the purposes of containing aggression against each other, they equally serve as a basis for ignoring governance issues in sister states. It is such “orientations of see no evil” that tend to lead to regional state collapse which militate against regional integration⁹.

Ng'eno et al have argued that the implementation of the whole EAC Treaty no doubt rests on political will since even though the potential benefits of deep integration are larger than lower levels of integration, such integration leads to greater loss of sovereignty. They further argue that a casual observation of events leading to the signing of the Treaty indicates that political will to succeed seems to be there this time and leaders are ambitious enough in their outlook of where they want to take the Community¹⁰.

Fast tracking of the economic and political integration in the EAC is an ambitious aspiration that calls for various obstacles that have hindered integration, to be addressed namely: lack of political will, privileging of narrow national interest over common

⁸ L. Wanyoto, Member of the Assembly, Uganda, to the Committee on Fast Tracking East African Federation Hearings, EAC Headquarters, Arusha, Tanzania 21 October 2004

⁹ M. Katumanga, 'Security Concerns and Lateral Pressures as a Basis for Enhanced Integration: The Case of North Western Kenya' in Mohiddin, Ahmed (ed), *Deepening Regional Integration of the East African Community*, (Addis Ababa: Development Policy Management Forum, 2005) p. 79

¹⁰ N. Ng'eno, K (et al), *Regional Integration Study of East Africa: The Case of Kenya* Op. Cit. p. 104

regional standards, economic and social differences and membership to other regional economic communities. States appear to pursue their own narrow national interests as a priority, often at the detriment of integration. Therefore, this study seeks to analyse the role of national interest in regional integration: the case of Kenya in the East African Community 2000-2007.

1.1 Problem Statement

Integration efforts in Africa have been plagued by failure due to states' reluctance to cede partial sovereignty. Yet ceding sovereignty is a prerequisite for the success of supranational organisations such as the EAC. Given past failures of integration, there is need to identify issues affecting integration not only for a clearer understanding of the challenges faced, but also to guide the ongoing efforts¹¹. Regional integration presupposes that states cede sovereignty by adhering to regimes that are created jointly under international law and not to violate those regimes to safeguard national interests. Kenya has been party to the regime creation in the EAC expounded in the EAC Treaty. Among other reasons for the collapse of the old EAC, was that Kenya was perceived to have dominated and benefited more.

The problem is that since the establishment of the new EAC, Kenya has on several occasions failed to comply with the EAC Treaty to safeguard its own national interest. Kenya has even resorted to changing the EAC Treaty provisions on the East Africa Court of Justice (EACJ) under the guise of protecting its sovereignty as demonstrated by squabbles related to the East African Legislative Assembly (EALA) and the EACJ, failure to fully implement the EAC Customs Union and multiple memberships to regional economic communities. This may not augur well for renewed efforts at

¹¹ Ibid. p. 1

regional integration in the EAC. Full integration in the EAC will not be achieved in a significant way until the members entrench the EAC Treaty at the national level. Thus, this study seeks to analyse the role of national interest in regional integration: the case of Kenya in the East African Community 2000-2007.

1.2 Objectives

1.2.1 General Objective

This study seeks to analyse the role of national interest in regional integration: the case of Kenya in the East African Community 2000-2007.

1.2.2 Specific Objectives

Specifically, this study seeks to:

1. Review theories of regional integration and assess their application to the EAC
2. Analyse the impact of Kenya's national interest on integration efforts in the EAC
3. Examine how national interest can be managed to enhance regional integration in the EAC

1.3 Literature Review

This section reviews literature that contributes to the ongoing debate on contentious issues in the area that the study intends to research on. It is divided into three themes: the first part analyses the theories of regional integration and their application in regional integration in Africa's. The second is national interest and regional integration in Africa that delves into the tensions between national interest and integration in Africa. The third and last part of this review looks at the EAC in perspective.

1.3.1 Theories of Regional Integration and Africa's Experience

Dougherty and Pfaltzgraff define integration 'as a process leading to a condition of political community, integration process is perceived by integration theorists as consensual, based principally on the development of shared norms, values, interests, or goals'¹². Ernst Haas defines integration as a process where 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 national states¹³.

Taylor argues that integration in the sense of transfer of authority and legitimacy to a new supranational set of institutions, is one response to the condition of interdependence-a condition in which actors in the international system are sensitive and vulnerable to the acts of other entities, whether these be governments or trans-national actors such as multinational corporations or terrorists groups¹⁴.

Naceur defines regional integration as a voluntary pooling of resources for a common purpose by two or more sets of partners belonging to different states. The process aims to reinforce structural interdependencies of a technical and economic sort, with positive effects on economic welfare. It is voluntary; it is collectively undertaken, bringing into play the concept of community building; and it is geographically defined¹⁵.

This section looks at three theories-functionalism, neo-functionalism and realism-and how they have been applied in regional integration in Africa. According to Senghor,

¹² J.E Dougherty and R.L Pfaltzgraff (Jr), *Contending Theories of International Relations*, (Adison Wesley: Longman, 1997) p. 420

¹³ E. B. Haas, *The Uniting of Europe*, (C.A Stanford University Press, 1957) p. 5

¹⁴ T. Taylor, *Approaches and Theory in International Relations*, (London: Longman, 1961) p. 254

¹⁵ N. Bourenane, 'Theoretical and Strategic Approaches', in *Lavergne, Real, Regional Integration and Cooperation in West Africa: A Multidimensional Perspective*, (Ottawa: International Development Research Centre, 1997) p. 50-51

any discussion of the theoretical foundations of regional integration in Africa must inevitably focus on functionalism and its offspring neo-functionalism¹⁶. Kibua posits that under the functionalist approach, regional integration is promoted piecemeal through gradual steps to painstakingly build a web of functional relations in trade, investment, infrastructure, culture, etc. In this building-block approach the political superstructure, such as a political federation, would be considered the logical culmination of the integration process from below¹⁷.

Balassa agrees with Kibua by arguing that there are five levels of integration: at the lowest level is free trade area in which tariffs and quotas are eliminated between the participating countries, but each country retains its own tariffs against non-members. The second level involves the establishment of a customs union in which, besides the suppression of discrimination in the field of commodity movements within the union, there is the equalisation of tariffs in trade with non-member states. The third level involves attaining a common market, where not only trade restrictions but also restrictions on the movement of factors of production are eliminated. The fourth level combines the suppression of restrictions on commodity and factors of production movement with some degree of harmonisation of national economic policies, in order to remove discrimination that was due to disparities in these policies. Finally is the political union¹⁸.

¹⁶ J. Senghor C., 'Theoretical Foundations for Regional Integration in Africa: An Overview' in Nyong'o, Anyang (ed), *Regional integration in Africa: Unfinished Agenda*, (Nairobi: Africa Academy of Sciences, 1990) p. 18

¹⁷ T. N. Kibua and Arne Tostensen, *Fast-tracking East African Integration: Assessing the Feasibility of a Political Federation by 2010* (Chr. Michelsen Institute (CMI); Norway, 2005) p. 17

¹⁸ B. Balassa, *The Theory of Economic Integration*, (London: George Allen & Unwin Ltd, 1961) p. 2

Senghor contends that nationalism and national self-consciousness in Africa are too volatile for the functionalist strategy. This has implications for attitudes towards sovereignty¹⁹. He points out that in the African experience, the absence of strong interest groups and the restricted role of technocrats deprives functionalism of its mercenaries and gatekeepers. And so the castle of sovereignty is left firmly protected. Similarly, functionalism prescribes that in the process of integration “sovereign rights” are transferred from the state to functional organisations²⁰.

Senghor further points out that in the African experience, there has been no initial separation of the integrationist tasks from the mainstream of political debate. Furthermore, a common value system and commitment to integration tends to be lacking. Loyalty and dedication to the promotion of national interests within these organisations is more the rule²¹. Politics cannot be separated from economics and power-relations because they are as present in the welfare field as in other fields. The predominance of politics in the functional integration efforts among developing countries has stunted growth of what has been called the supranational style²².

In the formation of the new EAC, on paper, the functionalist approach is embraced: creation of a customs union was considered the entry point followed by a common market, a monetary union, and ultimately a political federation of the EAC states²³. However, since 2004, efforts have been directed towards fast tracking the achievement of a political federation by 2010²⁴. The environment of underdevelopment

¹⁹ J. Senghor C., ‘Theoretical Foundations for Regional Integration in Africa: An Overview’ in Nyong’o, Anyang (ed), *Regional integration in Africa: Unfinished Agenda* Op. Cit. p. 25

²⁰ Ibid. p. 21

²¹ Ibid. p. 26-27

²² Ibid. p. 22

²³ N. Ng’eno, K (et al), *Regional Integration Study of East Africa: The Case of Kenya* Op. Cit. p. 8

²⁴ EAC, *Report of the Committee on Fast Tracking East African Federation* Op. Cit. p. 81

prevailing in Africa, and the dominance of political preoccupations at the national level and in inter-state relations, the success of the functional or building block approach is likely to be very limited²⁵. EAC is no exception as politics is taking centre stage.

Turning to neo-functionalism, Senghor avers that it elaborates and expands on functionalist thinking. Neo-functionalism is characterised by the importance attached to the role of loyalty in the process of integration. Loyalty is seen in a two-fold manner. First as a result of certain political and cultural homogeneity which provides the basis for integration that is itself the product of successful trans-national institutions. A second characteristic is the concept of spill over. The idea here is that functions cooperatively performed by governments in one area result in cooperation in other areas, leading eventually to integration. Spill over usually flows from a functionally specific economic area to a more controversial less technical and political area²⁶.

It is doubtful if the spill over process has characterised the African experience with functional regional integration due to various reasons. First, satisfaction is derived from lack of action and from narrowly defined activity. Invariably, the fact that the gains are very limited is not much cause for real concern. Second, intra-sectoral cross-boundary expansion and spill over from economic to political integration is foreclosed given the low levels of integration in catalytic sector itself (economic). Third, the statesman or politician plays a pivotal role in the integration process. There is little room for the automaticity of the spill over process. Fourth, pragmatic national interests are not transitory in the African case. Decision-makers approach inter-state cooperation with

²⁵ J. Senghor C., 'Theoretical Foundations for Regional Integration in Africa: An Overview' in Nyong'o, Anyang (ed), *Regional integration in Africa: Unfinished Agenda* Op. Cit. p. 30

²⁶ *Ibid.* p. 20-21

perceptions of competing, and even conflicting, national interests. The objective is to ensure that one's own interests are not trampled under²⁷.

Lastly, realism seeks to describe and explain the world of international politics *as it is*, rather than how we might like it to be²⁸. In general realists have argued that cooperation is possible under anarchy, but that it is harder to achieve, more difficult to maintain, and more dependent on state power that is appreciated by institutionalist tradition²⁹. International anarchy may lead states to be concerned about gaps in gains from cooperation not just because they seek security and survival, but also because they value their independence³⁰. On that basis, Waltz argues that states tend to be wary about cooperation out of a fear of becoming dependent on their partners³¹.

In Africa, MacLean notes that foreign policy decisions of Southern Africa states tend still to adhere to realist doctrine, despite the regional initiatives and policy documents that appear to fit within the broader 'human' security agenda. Even with respects to incidents and processes that have a definite regional character, state officials tend to see impervious national borders as the best solution to most problems, invoking the sanctity of sovereignty. She further notes that there appear to be several reasons why state-centric, *Realpolitik* strategies continue to dominate in the face of mounting evidence that suggests a need for a human-centred, regional agenda. Along with other 'inside' sources of inter-state tensions-lingering historical suspicions, and economic disparities-the personalised leadership style that has been associated with African statehood appears

²⁷ Ibid. p. 28

²⁸ S. Burchil et al, *Theories of International Relations*, 2nd edition (New York: Palgrave, 2001) p. 70

²⁹ J. M. Grieco, 'Understanding the Problem of International Cooperation: the Limits of Neoliberal Institutionalism and the Future of Realist Theory' in David A. Baldwin (ed), *Neorealism and Neoliberalism: the Contemporary Debate* (New York: Columbia University Press, 1993) p. 302

³⁰ Ibid. p. 315

³¹ K. Waltz, *Theory of International Politics*, (Reading, Mass.: Addison-Wesley, 1979) p. 106-107

to be a contributing factor³². The realist theory focus on national interest and survival may be the key to understanding why functionalism and neo-functionalism led regional integration has failed in Africa. Examining regional integration in the EAC using realist lens may provide useful insights that will help to structure integration in a more sustainable way.

1.3.2 National Interest and Regional Integration in Africa

Stephen Krasner in his 1978 classic *Defending the National Interest* used the term national interest to refer to the preferences of a nation's leaders, or put differently, the goals that are sought by the state³³. He further specified that such preferences, or set of objectives, must be related to general societal goals, persist over time, and have a consistent ranking of importance in order to justify using the term. If objectives changed daily or even annually, it would be misleading to use the term 'national interest'. As Krasner noted, in such cases one would better look to bureaucratic preferences or societal pressures to understand the actions taken by central decision makers³⁴.

Interests— those 'national interests' or 'preferences' articulated by decision makers—are also twofold: they can be a logical function of the identity itself, or a function of specific threats constructed in relation to the identity³⁵. Buzan notes that security, a key national interest, when discussed in the context of the international system, it is about the ability of states and societies to maintain their independent identity and their functional integrity. Whether local or global, the security of people is affected

³² S. J. Maclean, 'Challenging Westphalia: Issues of Sovereignty and Identity in Southern Africa' in Dunn, Kevin s. and Shaw Timothy M. (eds), *Africa's Challenge to International Relations Theory* (New York: Palgrave, 2001) p. 157

³³ S. Krasner, *Defending the National Interest*, (Princeton University Press, Princeton: 1978) in Anthoni van Nieuwkerk, 'South Africa's National Interest' *Op. Cit.* p. 90

³⁴ A. van Nieuwkerk, 'South Africa's National Interest', *African Security Review* Vol. 13 No. 2 (2004) p. 90

³⁵ *Ibid.* p. 91

by factors in five major sectors: military, political, economic, societal and environmental. Protecting people and institutions from a variety of threats is therefore in a country's national interest³⁶.

Adewoye contends that the theory of supranationality has yet to take root in Africa. The rule of law makes possible civil interaction, which is an asset in building human interaction and regional identity among different nationalities. Thus, the problem of ceding or reducing sovereignty cannot be well addressed if constitutionalism or the rule of law is not satisfied in Africa. What is required is a partial cession of sovereignty by member states in the blueprint for regional institutions³⁷.

Ng'eno et al contend that regional integration has political costs and benefits. There a number of benefits, namely: enhanced security of members and reduction of the work of intra-regional conflicts; strengthening of bargaining power as a regional bloc; facilitation of sharing of project cooperation (such as sharing of such resources as rivers, lakes, fishing grounds, hydroelectric power, rail connections) and cooperation to deal with trans-border problems such as pollution and transport bottlenecks; provision of a "commitment mechanism" for trade and other policy reforms; and greater feasibility in relation to unilateral or multilateral trade liberalisation. They posit that the most important political cost of regional integration is the greater loss of national sovereignty³⁸.

National sovereignty is the basis on which negotiations for setting up sub-regional and regional functional organisations are conducted. This generates strong inclinations to

³⁶ B. Buzan, *People, States and Fear*, (Lynne Rinner Publishers, Boulder: 1992), p. 19

³⁷ O. Adewoye, 'Constitutionalism and Economic Integration' in R. Lavergne (ed) *Regional Integration and Co-operation in West Africa*, Africa (World Press Inc., Trenton, NJ: 1997) p. 321-332

³⁸ N. Ng'eno K., (et al), *Regional Integration Study of East Africa: The Case of Kenya* Op. Cit. p. 19-20

protect national identity and promote national interests³⁹. Jackson contends sovereignty is invoked in a context or manner designed to avoid and prevent analysis, sometimes with an advocate's intent to fend off criticism of justifications for international "infringements" on the activities of a nation-state or its internal stakeholders and power operators. National government leaders and politicians, as well as special interest representatives, too often invoke the term "sovereignty" to forestall needed debate⁴⁰. As Nyaduga notes, the East African regional integration is currently too much driven by national interests and positions but in order to succeed with instituting a federation, regional agenda must prevail⁴¹.

1.3.3 The East African Community (EAC) in Perspective

A regional grouping for the three East African Countries (Kenya, Uganda and Tanzania) was initially formed in 1919. It developed into a customs union in 1967 under the EAC⁴². However, it collapsed in 1977 due to several factors, including ideological differences particularly between Kenya, which advocated capitalism by social interventions, and Tanzania, which pursued socialist policies. Political differences between Uganda (under Idi Amin) and Tanzania, and a general increase of mistrust among the three leaders following Amin's forceful takeover of the government of Uganda, aggravated the differences. The EAC was centred around the three countries' leaders and not on any serious political, social, or economic ideals. The second reason was huge income transfers in favour of Kenya to the extent that Tanzania and Uganda felt they were not

³⁹ J. Senghor C., 'Theoretical Foundations for Regional Integration in Africa: An Overview' in Nyong'o, Anyang (ed), *Regional integration in Africa: Unfinished Agenda* Op. Cit. p. 26

⁴⁰ J. Jackson H., Sovereignty-Modern: A new Approach to An Outdated Concept, *American Journal of International*, Vol. 97, No. 4. (October, 2003) p. 782-783

⁴¹ T. B. Nyanduga, President, East Africa Law Society to the Committee on Fast Tracking East African Federation Hearings *EAC Headquarters, Arusha, 21 October 2004*

http://www.eac.int/news_2004_10_fasttrack1025.htm

⁴² N. Ng'eno. K (et al), *Regional Integration Study of East Africa: The Case of Kenya* Op. Cit. p. 2

receiving a fair share of gains from the community. Other factors cited in the preamble of the EAC Treaty are lack of a strong participation of the private sector and civil society and lack of adequate policies to address the problem⁴³.

Its revival started in 1992 and culminated in the launch of the Community in 2001⁴⁴. The objectives of the community include to: develop policies and programmes aimed at widening and deepening cooperation among partner states in political, economic, social and cultural fields, research and technology, defence, security and legal and judicial affairs, for their mutual benefit. The Treaty establishes a number of organs and institutions to perform the functions of the Community. These are the Summit, Council, coordination committee, sectoral committees, the East African Court of Justice (EACJ), the East African Legislative Assembly (EALA) and the Secretariat⁴⁵.

The Treaty commits states to six fundamental principles, including: good governance, democracy, respect for the rule of law, accountability and transparency; social justice and equal opportunities; gender equality; and the "recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights"⁴⁶. Article 7 of the Treaty which highlights principles of the community commits partner states to undertake to abide by the principles of good governance, including adherence to the principles of democracy, the rule of law, social justice and the maintenance of universally accepted standards of human rights.

⁴³ Ibid. p. 102

⁴⁴ Ibid. p. 3

⁴⁵ East African Community, *Treaty Establishing the East African Community* Op. Cit. p. 12-13

⁴⁶ Ibid. Article 6 (d)

However, Kenya has in the recent past failed to abide by procedures and decisions of the EAC Treaty reflecting the tensions between national interest and regional integration in the EAC. During the election of members to the East African Legislative Assembly (EALA) in 2001 Kenya failed to ensure gender balance in the election of its members. Consequently, the Kenyan women's movement staged a demonstration against the manifestly sexist exclusion of women representatives by the government led by the former President, Daniel Arap Moi. Since the matter was not presented to the East African Court of Justice (EACJ) no action was taken to reverse the action. The members were sworn in despite the fact that the other two member countries-Tanzania and Uganda- observed the EAC Treaty provisions⁴⁷.

On the nomination of the members to EALA in 2006, on the 9th November 2007 representatives of Kenyan political parties brought a reference to the EACJ under Article 30 of the Treaty for the Establishment of the East African Community. They contended that the process by which the representatives of the Republic of Kenya to the EALA were nominated was incurably and fatally flawed in substance, law and procedure and contravenes Article 50 of the Treaty in so far as no election was held, and averred that the Clerk to the National Assembly of Kenya, forwarded to the Clerk to the EALA, an illegal list of names of Kenya's representatives⁴⁸.

⁴⁷ Article 50 (1) states that 'The National Assembly of each Partner State shall elect, not from among its members, nine members of the Assembly, who shall represent as much as it is feasible, the various political parties represented in the National Assembly, shades of opinion, gender and other special interest groups in that partner State, in accordance with such procedure as the National Assembly of each Partner state may determine' East African Community, *Treaty Establishing the East African Community* (EAC Secretariat: Arusha, 2002)

⁴⁸ Moijo, M . ole Keiwua, Joseph. N. Mulenga, Augustino. S . I . Ramadhani, Kasanga Mulwa, Harold Nsekela, *East African Court of Justice, Ruling on case Reference No. 1 of 2006*, March 30, 2007 http://www.eac.int/news_2006_11_EACJ_ruling_on_kenya_EALA_mps.pdf

Consequently, the EACJ rejected the Kenyan nominees for the regional parliamentary body because they had not been chosen democratically through elections, as required by Article 50 of the EAC treaty. As Chikwanha argues, Kenya became embroiled in an internal squabble over the selection of the candidates, signalling that respect for the rule of law could be a problem for the EAC⁴⁹.

In November and December 2006, the Chairperson of the EAC Summit and President of the Republic of Kenya, H.E. Mwai Kibaki, and the Kenyan Minister for East African and Regional Co-operation of the Republic of Kenya, Hon. John Kipsang' arap Koech, made several remarks, covered by the print and electronic media, in which they alleged that: the Court had overstepped its jurisdiction and that it had infringed on the sovereignty of the Republic of Kenya, the Court was biased because the 2 Kenyan Judges of the Court had a grudge against the Government of the Republic of Kenya and intimated that they would undertake necessary measures to "clip the wings of the Court" and/ or otherwise teach it a lesson⁵⁰. They introduced amendments to the EAC Treaty in that regard.

Kenya continues to impose non-tariffs barriers on goods from neighbouring states yet it signed the customs union protocol in 2005. This hinders trade between EAC members. Deeper integration is also hampered by multiple memberships to other regional economic communities. For instance, Kenya is also a member of the Common Market for East and Southern Africa (COMESA) which questions its total commitment to

⁴⁹ A. B. Chikwanha 'What Comes First: Economic or Political Union? Tracing the Evolution of Common Markets, Unions and Federations in East Africa' (Institute for Security Studies, 2007) <http://www.issafrica.org>

⁵⁰ In the East African Court of Justice at Arusha reference No. 9 of 2007 in the matter of amendments to the Treaty for the Establishment of the East African Community <http://www.ealawsociety.org/UserFiles/File/ealsref3of2007.pdf>

integration in the EAC. From the cases above, it is evident that tensions between national interest and regional integration could have a negative impact on regional integration in the EAC.

Kayunga argues that, one factor that has often undermined the process of regional integration in Eastern Africa has been nationalism⁵¹. Apuuli notes that the two processes are antagonistic to one another on three counts. First while nationalism aims at creating boundaries with each nation occupying a native home or territory, regional integration seeks to both undermine the territorial basis of a nation and facilitate the free movement of people. Secondly, whilst nationalism seeks to enhance cultural and other forms of identity of particularism, integration is a universalising process, seeking to create new forms of identity or forms of citizenship not based on the nation state. Thirdly, whilst nationalism seeks to enhance the sovereignty of the nation state, regionalism seeks to undermine it⁵².

The EAC itself acknowledges that a key determining factor of integration in East Africa is the protectiveness of states over their sovereignty. From the foregoing it is clear that realising integration in the EAC will have to overcome the challenges of sovereignty and national interest

Conclusion

Although various scholars have written on theories of integration in Africa and on national interest and regional integration, there is an absence of a comprehensive analysis

⁵¹ S. S. Kayunga, 'Deepening Political Integration of the EAC Countries: The Uganda Case', in Mohiddin, Ahmed (ed), *Deepening Regional Integration of the East African Community*, (Addis Ababa: Development Policy Management Forum, 2005) p. 207

⁵² K. P. Apuuli, 'Fast Tracking East African Federation: Asking the Difficult Questions', (Paper presented in Development Network of Indigenous Voluntary Associations (DENIVA) Public Dialogue on Fast Tracking East African Federation, 24th November 2005, Kampala)

of the impact of Kenya's national interest on the renewed efforts at regional integration in the EAC. As noted above, functionalism and neo-functionalism theories of integration have not worked in Africa. This is mainly due to lack of focus on national interest and its role in regional integration as advanced by the realist theory of international relations. Therefore, there is a lacuna that this study on the role of national interest in regional integration in the EAC focussing on Kenya seeks to fill. The study will contribute immensely to global body of literature on regional integration.

1.4 Justification

1.4.1 Academic Justification

From the literature review, it is apparent that scholars have written widely on regional integration theories and the experience of their application in regional integration schemes in Africa. They have also looked at national interest and regional integration. Although they have covered these areas, there is an absence of a comprehensive analysis of the impact of Kenya's national interest on the renewed efforts at regional integration in the EAC, and in particular, recent failure by Kenya to uphold the Treaty of the EAC as noted above. The study is therefore justified by the existence of this lacuna, which it intends to fill as a contribution to the literature on regional integration in Africa. Consequently, the study will contribute to the literature and data that will be useful for researchers, students and implementers and will form basis for future studies of a similar nature.

1.4.2 Policy Justification

The issue of national interest lies at the root of most successes or failures of regional integration efforts. This study therefore analyses role of national interest in regional

integration in the EAC focussing on Kenya. The study aims to contribute to policies that would mitigate the negative impacts of national interest on regional integration in EAC in order to ensure its sustainability as it evolves into a political federation. The study will assist policy makers at national and regional levels to understand how national interest impacts on regional integration as the EAC moves towards a political federation.

1.5 Theoretical Framework

This study will use the realism theory of international relations as a guide. Realism encompasses five propositions that will be useful in analysing the role of national interest in regional integration. First, states are the major actors in world affairs. Second, the international environment severely penalizes states if they fail to protect their vital interests or if they pursue objectives beyond their means; hence, states are 'sensitive to costs' and behave as unitary-rational agents. Third, international anarchy is the principle force shaping the motives and actions of states. Fourth, states in anarchy are preoccupied with power and security, are predisposed toward conflict and competition, and often fail to cooperate even in the face of common interests. Finally, international institutions affect the prospects for cooperation marginally⁵³.

Krasner contends that sovereignty is a political order based on territorial control. The international system is anarchical. It is a self-help system. There is no higher authority that can constrain or channel the behaviour of states. He argues that sovereign states are rational self-seeking actors resolutely if not exclusively concerned with relative gains because they must function in an anarchical environment in which their security

⁵³ J. M. Grieco, 'Anarchy and the Limits of Cooperation: A Realist Critique of the Newest Liberal Institutions' in David A. Baldwin (ed), *Neorealism and Neoliberalism: the Contemporary Debate* Op. Cit. p. 118

and well-being ultimately rest on their ability to mobilise their own resources against external threats⁵⁴.

Senghor notes that empirical studies on African integration have also emphasised the relevance and importance of domestic political developments on the changing positions of local political actors, on the determination of national approaches to integration, and on the scope for government actions in the establishment of strategy. There are built-in limits of pragmatic politics at the national level which condition action at the international level. Consequently, policies and actions on cooperation and integration are basically reflective of their perceived implications for domestic political fortunes and of the quest for a monopoly of power in society. Even when the latter is achieved, the domestic consensus based on which government can proceed to negotiate any form of surrender of national sovereignty often is, to a great extent, lacking. Integration means a greater burden than existing political climates can tolerate⁵⁵.

According to Carr, in the international system there is no equivalent regulatory system which can enforce compliance on states. There is no binding international law or legal system which can bring states to account for their behaviour. States can 'get way' with whatever their power allows them to achieve. There is no corresponding force which can be invoked to 'reconcile the seemingly irreconcilable clash of interest between nations'. Moreover, appeals to the common interests of states were 'illusion', due to the voice of preponderant power, and often at the expense of the weak and disadvantaged⁵⁶.

⁵⁴ S. Krasner. 'Realism, Imperialism and Democracy', *Political Theory*, 20 (1992) p. 39

⁵⁵ J. Senghor C., 'Theoretical Foundations for Regional Integration in Africa: An Overview' in Nyong'o, Anyang (ed), *Regional integration in Africa: Unfinished Agenda* Op. Cit. p. 24-25

⁵⁶ E.H Carr, *The Twenty Years Crisis* (London: 1939) p. 297

Clapham argues that sovereignty often has tended to provide protective shield for leaders acting ostensibly in the interests of the state, but actually lining their own pockets, often through business alliances forged during the conduct of international political affairs⁵⁷. Realists identify even greater uncertainties for states considering cooperation: which among them could achieve the greatest gains, and would un-balanced achievements of gains affect relative capabilities? In addition, realists argues that a state that knows it will not be cheated still confronts another risk that is at least as formidable: perhaps a partner will achieve disproportionate gains and thus strengthened, might someday be a more dangerous enemy than if they had never worked together. For realists, state efforts to cooperate entail these dangers plus a much greater risk, for some states, that cooperation might someday result in lost independence and security⁵⁸.

From the foregoing, it is clear that the realist theory unlike functionalism and neo-functionalism, does not assume that states interest can be subordinated by functional cooperation in welfare areas. It argues that national interest determines a state willingness to cede sovereignty to regional institutions. This study will therefore use the realist lens to analyse how Kenya's national interests have impacted on regional integration in the EAC under the guise of protecting its sovereignty.

1.6 Hypotheses

The Study will be guided by the following hypotheses:

1. The pursuit of national interest hinders regional integration in the EAC;

⁵⁷ S. J. Maclean, 'Challenging Westphalia: Issues of Sovereignty and Identity in Southern Africa' in Dunn, Kevin and Shaw Timothy M. (eds), *Africa's Challenge to International Relations Theory* Op. Cit. p. 149

⁵⁸ J. M. Grieco, 'Anarchy and the Limits of Cooperation: A Realist Critique of the Newest Liberal Institutions' in David A. Baldwin (ed), *Neorealism and Neoliberalism: the Contemporary Debate* Op. Cit. p. 131-132

2. States use regional integration to advance their national interest only;
3. The pursuit of national interests by states does not have an impact on regional integration.

1.7 Research Methodology

The main purpose of this study is to examine the role of national interest in regional integration. It is specifically intended to analyse the impact of states' pursuit of narrow national interest at the expense of common goals of regional integration. Studies of this nature are best studied using the case study method research design. In this study, the case is the role of Kenya's national interest on regional integration in the EAC in the period between 2000 and 2007. The design will enable the researcher to analyse smaller samples, be concrete and contextual.⁵⁹

This study will rely on both primary and secondary sources of data. Primary data will be collected through unstructured interviews with the aim of finding out the role of national interest in regional integration. Even though unstructured questionnaires are easy to develop, they present a high risk of bias during analysis of data.⁶⁰ This study however attempts to address this loophole by using qualitative means to analyse data. The main respondents will be: members of government departments involved in regional integration including; the Ministry for East African and Regional Co-operation of the Republic of Kenya; Office of the Attorney General of Kenya; members of the EAC Fast Tracking Committee; former opposition members of National Assembly of Kenya who lodged a complaint against Kenya at the EACJ over nomination of members to the EALA, members of the business community and scholars who have published

⁵⁹ C. F. Nachmias and D. Nachmias, *Research in Methods in Social Sciences* 5th ed. (London: St. Martins Press Inc., 1996) p. 234

⁶⁰ *Ibid.*, p. 235

extensively on regional integration in Africa, Civil society organisations that have been involved in regional integration in the East African Community such as the East African Law Society and Kituo cha Katiba will also be interviewed. Other respondents will include Members of Parliament and judges of the current and previous sessions of the EALA and EAC respectively will be interviewed from Kenya, Uganda and Tanzania their perspectives on Kenya's national interest and its impact on regional integration in the EAC.

Simple random sampling in which all elements of the frame are treated equally⁶¹ will be used to select four of these departments and organisations. Two respondents from each department or organisation selected will be interviewed. The respondents will be selected using stratified sampling in order to ensure that particular groups within the departments and organisations are adequately represented in the sample, and to improve efficiency by gaining greater control on the composition of the sample. One respondent will then be chosen from each strata using convenience sampling that relies on the availability and/or accessibility of the respondents at the time of the interview. Although this criterion does not ensure representation of the whole, it will be applied on a small stratum which is already representative of the department or organisation.

In addition, published books, papers, journals, the Internet and unpublished works will be used as secondary data sources. They include: published books on regional integration in the EAC and Africa at large by various authors; the EAC's website and various reports and protocols of the EAC; reports from civil society organisations engaged in regional integration such as the East Africa Law Society in Arusha, Kituo Cha

⁶¹ O. Mugenda and A. Mugenda, *Research Methods: Qualitative and Quantitative Approaches* (Nairobi: ACTS Press, 2003) p. 45

Katiba in Kampala; journals on regional integration and international relations; and unpublished works such as MA Thesis from the Institute of Diplomacy and International Studies among others. Further, the Jomo Kenyatta Memorial Library (JKML), other libraries will be visited during this research

1.8 Chapter Outline

Chapter One: National Interest and Regional Integration

This Chapter will provide an insight into the structure of the thesis including the: introduction, statement of the problem, objectives, hypotheses, justification, literature review, theoretical framework, research methodology and chapter outline.

Chapter Two: Theories of Regional Integration and the Experience of Integration in Africa

This chapter will review theories of regional integration and assess their application and success in the African context.

Chapter Three: Review of Integration Efforts in East Africa

This Chapter will review efforts towards regional integration in East Africa. It will also focus on the reasons why the old EAC failed and assess whether national interest was a cause of its collapse.

Chapter Four: Kenya's National Interest and its Implications for Regional Integration in the EAC

This chapter will examine the concepts of national interest and integration and their implications for EAC. The chapter will identify how Kenya's national interest impacts on renewed efforts at integration in the EAC.

Chapter Five: Conclusion

Following the findings in the previous chapter, this chapter will provide a conclusion. Based on the findings, the chapter will proffer recommendations on how best national interest can be managed to enhance regional integration towards a sustainable EAC.

CHAPTER TWO

Theories of Regional Integration and the Experience of Integration in Africa

2.0 Introduction

The ground theories of regional integration come from the field of International Relations (IR). These looked at integration as a process. Later in the 1980s theories from Comparative Politics (CP) also aimed to explain integration, but in their attempt they approached integration from the governance point of view⁶². In the first part of this chapter, IR and CP theories will be discussed in terms of achievements and shortcomings, while the second part will assess their application in and relevance to the experience of integration in Africa generally, and East African in particular.

2.1 An Analysis of the Theories of Regional Integration

The IR theories that affect regional integration debate are neo-liberalism, functionalism, neo-functionalism and neo-realism. On the other hand, CP theories of integration include federalism and inter-governmentalism.

2.1.1 Functionalism

Functionalism is a theory of international relations that arose principally from the experience of the Second World War and a strong concern about the obsolescence of the State as a form of social organization. Rather than the self-interest of nation-states that realists see as a motivating factor, functionalists focus on common interests and needs shared by states (but also by non-state actors) in a process of global integration triggered by the erosion of state sovereignty and the increasing weight of knowledge and hence of scientists and experts in the process of policy-making⁶³.

⁶² B. Rosamond, *Theories of European Integration* (New York : St. Martin's Press, 2000) p. 106

⁶³ *Ibid.*, p. 106

According to functionalism, international integration - the collective governance and interdependence between states - develops its own internal dynamic as states integrate in limited functional, technical, and/or economic areas. International agencies would meet human needs, aided by knowledge and expertise. The benefits rendered by the functional agencies would attract the loyalty of the populations and stimulate their participation and expand the area of integration⁶⁴.

Functionalism is concerned with “the ways of creating a working peace system. It involves a diagnosis of the problems of disorder in the international society, and a prescription for ways of shaping a better world” in the words of its chief architect, David Mitrany⁶⁵. Mitrany further asserts that the sound sense of peaceful change is “...to make changes of frontiers unnecessary by making frontiers meaningless through the continuous development of common activities and interests across them...overlaying them with a natural growth of common activities and common administrative agencies”⁶⁶. Critics of functionalism maintain that functionalists “underestimate the strength of state sovereignty as a barrier to the transfer of loyalties to the international level”⁶⁷.

The greatest deficiency in the functional strategy is its inadequate consideration of the nature and operation of politics. In reality, politics cannot be separated from economics and power relations are as present in the welfare field as in other fields⁶⁸. The disruptive role of politics at the transnational level has been recognized by Nye. Policies

⁶⁴ E. Haas, *Beyond the Nation-State: Functionalism and International Organization* (Stanford: Stanford University Press, 1964) p. 23

⁶⁵ A.J.R. Groom and P. Taylor (eds), *Functionalism: Theory and Practice in International Relations* (London: University of London Press, 1975) p. 1

⁶⁶ D. Mitrany, *A Working Peace System: An Argument for the Functional Development of International Organisation* (London: Oxford University Press, 1943) p. 26-27

⁶⁷ A. L. Bennet and J. K. Oliver, *International Organisations: Principles and Issues*, (7th Edition) (New Jersey: Prentice Hall, 2002) p. 12

⁶⁸ *Ibid.*, p.22

and actions on cooperation and integration are basically reflective of their perceived implications for domestic political fortunes and of the quest for a monopoly of power in society.⁶⁹

The effective implementation of regional integration schemes in Africa is constrained by difficulties that revolve around the lack of clarity regarding the functions, responsibilities and powers of the different organs involved in various regional integration arrangements. In many cases, this lack of clarity results in virtual impotence of the entire arrangement since the central body often lacks authority and resources to act on its own initiative while there are often no focal points at the national level with responsibility to act⁷⁰.

2.1.2 Neo-Functionalism

With the establishment of the United Nation (UN) and its various agencies, plus the evolution of the movement for European integration in the 1950s and 1960s, there arose a breed of contemporary functionalist thinkers conventionally referred to as neo-functionalists. The neo-functional approach is flexible and modest positing incremental structural integration based on a convergence of interests over time⁷¹.

Essential for the neo-functional thesis is the idea of spillover according to which integration would deepen from economic to political and the result would be an integrated union of states (and their societies) which would acquire the characteristics of 'domestic political systems'⁷². Another key element was the existence of a high authority

⁶⁹ See J. Nye, *African Integration* (Cambridge: Harvard University Press, 1965) p. 119

⁷⁰ T. Ademola Oyejide Policies for Regional Integration in Africa, African Development Bank, *Economic Research Papers* No. 62 (2000) pp.1-34: 16

⁷¹ A. Nyong'o, *Regional Integration in Africa: Unfinished Agenda, Regional Integration in Africa: Unfinished Agenda* (Nairobi: Academy Science Publishers, 1990) p. 19

⁷² B. Rosamond, *Theories of European Integration*, (New York: St. Martin's Press, 2000) p. 113

(above the nation states) which would give the integration process the right direction. A high authority which wrongly guides member states would be in the view of neo-functionalists the definite element that drives that given union to failure. The integration process would be led by technocratic elites and therefore governance of the union would not be based on ideological grounds, but on pragmatic satisfaction of interests and on technocratic expertise. Haas, the founding father of neo-functionalism based his initial thesis on the idea of loyalty. In this sense, political spillover would be accomplished through a process of loyalty transference from the nation state to the high authority (authorities)⁷³.

According to neo-functionalists, there are two kinds of spillover: functional and political. Functional spillover is the interconnection of various economic sectors or issue-areas, and the integration in one policy-area spilling over into others. Both this spillovers have been experienced in the East African Integration effort. The community is functional as economic sectors and issues have been integrated. Moreover, the community is hoping to merge into a political unit.⁷⁴

Schmitter Phillipe introduces several typologies; spill-round, build-up, retrenchment and spill-back. Spill-round occurs when there is an increase in scope of functions performed by an integrative organization without a corresponding authority. Build-up is an increase in decisional autonomy and authority of an integrative organization without entry into new areas. Retrenchment refers to an increase in the levels of joint arbitration while reducing authority of an integrative organization. Spill-

⁷³ E. Haas, *Beyond the Nation-State: Functionalism and International Organization* op. cit., p. 27

⁷⁴ Ibid.

back is a retreat both in scope of functions and authority of an integrative organization to a previous situation⁷⁵.

Although initially the process of spillover was regarded as one directional, Lindberg and Scheingold accepted the idea of spillback. They argued the fact that integration could stop or slow down further integration due to the pressure that it causes among member states⁷⁶.

The critique of neo-functionalism is rich and varied. One of the ideas mostly criticized is that of the decreased role and authority of the member state. Empirical evidence indicated the opposite and even ethical arguments were evoked such as those that the state was the guardian of key values of liberty and justice in the society. The idea of spillover, particularly the fact that economic integration would lead to political integration was challenged by various critics, most laying down the basis of inter-governmentalism through their critique.

Fairly on the same line of argument, Hansen asserts that neo-functionalists made three critical errors: not making a high/low politics distinction, not placing the European project in an international context, and refusing to accept that mutual economic gains can exist and can be obtained without a supranational high authority. Neo-functionalists, particularly Haas, later responded to some of these critiques. He argued that integration should cease to be a study in its own right and attention should be focused on interdependence and through this on the multi-actor complexity⁷⁷.

⁷⁵ A. Mohiddin, *Deepening Regional Integration of the East African Community* (Addis Ababa: DPMF, 2005) p. 54

⁷⁶ Lindberg and Scheingold, *Europe's Would-Be Polity: patterns of Change in the European Community* (Englewood Cliffs, NJ: Prentice Hall, 1970) p. 37

⁷⁷ E. Haas, *Beyond the Nation-State: Functionalism and International Organization* op. cit., p. 28

In Africa, the spill-over, especially the political one is yet to be realised. Even in regional integration schemes that have achieved monetary unions and freemovement of people and goods, political union still remains a pipe dream. Examples of full monetary (or currency unions) in which members share a common currency and monetary authority or central bank include the CFA zone arrangements in West Africa West African Economic and Monetary Union (UEMOA) and the Central African Economic and Monetary Community (CEMAC). Second is the clearing (payments) union which involves some cooperation between the central banks of member countries but imposes no restrictions on the monetary and exchange rate policies of their members. The two such arrangements in Africa are the West African Clearing House (WACH) recently transformed into the West African Monetary Agency (WAMA) and the Common Market for East and Southern Africa (COMESA) Clearing House. In West Africa, WACH was transformed to WAMA in 1993 and given the explicit objective of establishing a single monetary zone within ECOWAS⁷⁸.

Transfer of loyalty to a supranational institutions has not happened in any integration scheme in Africa. Oyejide asserts that regional cooperation in Africa has for too long been taken to be the business of governments. Due to this, there has been little or no awareness among the people and as such, the benefits of membership and of economic integration have not been well articulated to member states and stakeholders. Furthermore, many people at the grassroots are neither knowledgeable about the organisation nor aware of the process of economic integration due to lack of information⁷⁹.

⁷⁸ T. Ademola Oyejide Policies for Regional Integration in Africa, *op.cit* p.23

⁷⁹ M. Nyirabu, 'Appraising Regional Integration in Southern Africa' *op.cit* pp. 21-32: 25

2.1.3 Inter-Governmentalism

Inter-governmentalism appeared as a reaction to neo-functionalism and was rooted in two currents: neo-realism whose core ideas were that the distribution of capabilities between member states induces differences of power, and neo-liberalism, which focused on the interaction of states' interests. An intergovernmental view was put forward by Wincott, who viewed integration (governance) as a two level game played by the member states – at the national level office holders build coalitions among domestic groups; at the European level they bargain in ways that enhance their position at the domestic level by satisfying demands of key interest groups⁸⁰.

Another vision of inter-governmentalism was propagated by Moravcsik's liberal inter-governmentalism thesis which argues that integration goes as far as member states want it to go and European institutions exist due to the deliberate will of member states to satisfy their interests and are instruments for achieving member states' objectives⁸¹. It was argued that inter-governmentalism and particularly Moravcsik's thesis strengthened neo-functionalist beliefs. Lindberg, for example, states that member states' behaviour in negotiations at the European level gaining autonomy and space of maneuver in relation to their domestic constituencies, could also account for the European Commission⁸².

Others criticize inter-governmentalism for being an approach rather than a theory, because Moravcsik fails to define the circumstances in which this 'theory' could be empirically refuted – a criticism similar to that experienced by neo-functionalist. It is also

⁸⁰ D. Wincott, 'Rebutting Intergovernmentalism and Ensnared by It?' *The International Studies Review*, Vol. 7, No. 1, March 2005, pp. 104-106: 105

⁸¹ A. Moravcsik, 'Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach' *Journal of Common Market Studies* Vol. 31 No. 4, 1993, p. 10

⁸² Lindberg and Scheingold, *Europe's Would-Be Polity: patterns of Change in the European Community* op. cit., p. 12

argues that Moravcsik's approach fails to account for the day-to-day policy-making where bargaining is not the norm and he also does not account for interactions among institutions and the impact of membership⁸³.

This approach could explain, to some extent the African approach where, as Nyirabu posits, the speed of regional economic co-operation, has been stonewalled by the absence of strong institutions with powers to enforce collective decisions including various treaty provisions. It is significant to note that the decision-making process in the regional communities is made by consensus. The trouble with this style of decision making is that all member states have to agree. This means that countries that move at the slowest pace dictate the pace of economic co-operation. From past experience another limitation of regional communities is the lack of centrally co-ordinated institutional mechanisms to enforce mutually agreed policies and principles. For example, lack of progress towards realisation of the Abuja Treaty is due to the absence of an independent African Economic Community Secretariat which could carry out assigned duties and would have the confidence to initiate and implement bold policies which, though sought-after, national governments may loathe to take⁸⁴. The regional institutions have largely re-imposed Secretariats for inter-governmental consultations with implementation and enforcement powers remaining at the national level.

2.1.4 Realism

At the heart of the realist approach is the insistence that we study the political world 'as it actually is and as it ought to be in view of its intrinsic nature, rather than as people would

⁸³ M.A Pollack, 'International Relations Theory and European Integration' *Journal of Common Market Studies* Vol. 39 No. 2, 2001 p. 221-44

⁸⁴ M. Nyirabu, 'Appraising Regional Integration in Southern Africa' *op.cit* p. 26

like to see it'⁸⁵. The underlying principles of realism are disarmingly straightforward. According to Keohane, 'the three most fundamental Realist assumptions' are these: that the most important actors in world politics are territorially organised entities (city-states or modern states); that state behaviour can be explained rationally; and that states seek power and calculate their interests in terms of power, relative to the nature of the international system that they face⁸⁶.

It is absolutely central to the realist position that the political context within which sovereign states interact is anarchic. The world consists of sovereign states which recognise no superior authority. The context in which all international political actors must operate is one in which there is no higher authority and no overarching system of enforceable law to which inter-states disputes can be referred⁸⁷.

According to Waltz, each state pursues its own interests, however defined, in ways it judges best. Force is a means of achieving the external ends of states because there exists no consistent, reliable process of reconciling the conflicts of interest that inevitably arise among similar units in a condition of anarchy⁸⁸. Given the anarchic nature of the world system and the preponderance of 'power politics', states (as unitary actors) are seen to be chronically concerned with the protection of their own interests, and this means, above all, ensuring the integrity of their physical territory. Thus realists conventionally perceive national security to be the first and preponderant interest of all states⁸⁹.

⁸⁵ K. Waltz, *Theory of International Politics*, op.cit p. 108

⁸⁶ R. O Keohane, *International Institutions and State Power* (London: Westview Press, 1989) p. 131

⁸⁷ C. Pierson, *The Modern State*, 2nd edition. (London: Routledge, 2004) p. 133

⁸⁸ K. Waltz, *Theory of International Politics*, op.cit p. 106

⁸⁹ C. Pierson, *The Modern State*, 2nd edition. (London: Routledge, 2004) p. 134

The realist view of international relations is state-centric. Although there is some recognition of the increasing role of international organisations of varying kinds (United Nations, the World Bank, the European Union, etc), the realists' insistence is that states' interests remain paramount and that often these new institutional orders constitute a new context in which fairly conventionally defined national interests may be pursued. Thus, rather than the United Nations being a new forum for world government, it is seen as another context in which the most powerful nation-states (above all, the USA) pursue their own national interests⁹⁰.

Whatever concessions realists are willing to make to the growth of transnational organisations, at the core remains their insistence that by far the most important international political actors are nation-states. The existence of supra-national organisations has a quite limited impact the ability of states to cooperate, especially where such cooperation would require the surrender of sovereign state authority to some other agency. Certainly, realists resist the suggestion that any of these transnational institutions is coming to constitute some sort of 'proto-state' with the capacity to overcome the collective choice problems of individual states by acting as an authoritative arbiter of national interests⁹¹.

Critics of realism begin by challenging the assumption that states are the only key international players. Typically, liberal-pluralists point to the rise of transnationalism i.e. to growth of intense and frequent contacts among a range of non-state actors sustained across national borders. These contacts may range from large public organisations (such as the World Health Organisation or Oxfam, or large corporations, such as Unilever or

⁹⁰ Ibid. p. 137

⁹¹ Ibid. p. 137

IBM) through to inter-personal contacts as on the Internet or the mass movements of individual tourists⁹². States and societies in the international system have become enmeshed in a whole network of relationships (economic, political, social, cultural) at differing levels (national, sub-national and supra-national) which tend to promote forms of stable international cooperation⁹³.

2.1.5 Neo-Realism

Neo-realism like Realism assumes anarchy as a foundation of the international system. Baldwin, argues that it is more accurate to describe the neorealist position as favouring a limited form of cooperation rather than a complete or trusting one. One reason for this is what might be called relative gains. Relative gains are the measurement of the gains of two or more states in relation to each other. This is different from the gains of the enterprise that the two states cooperated to achieve. It is a measure of which state gained *the most* from the venture. For neo-realists this is extremely important, for today's friend may be tomorrow's enemy in war, and an individual state's survival is its paramount concern⁹⁴. Consequently, the advances of any other state are a cause for concern.

Hobson argues that for neo-realists, cooperation is usually something temporary that two or more states might agree to solve a problem, such as the cooperation between the USA, UK and USSR during World War 2, but it is not something that states would normally choose to sustain because of the high risk of dangerous dependence. One form of state cooperation that neo-realists envisage is that of hegemonic cooperation. This occurs when there is a leading state in the world system with a preponderance of

⁹² Ibid. p. 139

⁹³ Ibid. p. 141

⁹⁴ D.A. Baldwin, *Neorealism and Neoliberalism* (New York: Columbia, 1993) p. 118

economic and military power, and when this leading state acts to create a coalition of allies⁹⁵.

Therefore, for neo-realists cooperation is both limited and dangerous. Cooperation may be needed to obtain certain goals, but it is fundamentally hazardous to rely on any state other than one's own. To do so invites risks of betrayal, and introduces the possibility of a state facing attack or even total destruction from another state it once trusted as an ally.

This theory aptly describes the experience in Africa. As Nyirabu posits, the implementation of community protocols on integration has been undermined by concerns about diminishing national sovereignty and the independence of national policy making. Thus, the unwillingness of governments to subordinate immediate national political interests to long-term regional goals or to cede essential elements of sovereignty to regional institutions is one of the biggest obstacles to regional integration⁹⁶.

2.1.6 Neo-Liberalism

Keohane, a neo-liberalist sees the state as a self-interested actor in a similar fashion to neo-realists. Indeed, for Keohane the state is a "*rational egoist*" who will seek maximum personal utility in any action or interaction in which it is involved⁹⁷. This theoretical position correlates with neorealist conceptions of the state. One primary difference between neo-realism and neo-liberalism occurs in their view of the way states will pursue their self-interest with regards gains.

⁹⁵ J.M. Hobson, *The State and International Relations* (Cambridge: Cambridge University Press, 2000) p.39

⁹⁶ M. Nyirabu, 'Appraising Regional Integration in Southern Africa' op.cit p. 27

⁹⁷ Keohane and Nye, *Transnational Relations and World Politics* (London: Harvard University Press, 1971) p. 74

Viotti and others argue that in contrast to the neo-realist preference for understanding cooperation in terms of relative gains in what might be a zero-sum game, neo-liberals view the interactions of states as a positive-sum game in which all the potential players could stand to benefit from absolute gains. The positive-sum game is one whereby the international system can be viewed as having resources or room for states to gain or change their nature without infringing on the ability of other states to gain in turn. Absolute gains, or gains without reference to other state benefit, as a result become the concern of the self-interested state⁹⁸.

Baylis and others argue that where neo-realists propose that self-interest and lack of any world authority to oversee state cooperation will lead to a lack of any genuine long-term cooperative efforts, neo-liberal institutionalists see just the opposite occurring. Rather than pursuing short-term relative gains, states will wish to pursue long-term absolute gains, and to do this they will seek long-term cooperative interactions. The key to these long-term cooperative interactions are institutions, which neo-liberal institutionalists see as the 'mediator and the means' to prevent cheating in the international system⁹⁹.

Papp argues that there is strong motivation for states to cooperate, and indeed to increase cooperation over time. By the very act of working together states reduce the uncertainty or anarchy that lies between them, and increase both their security and their

⁹⁸ Viotti and Kauppi, *International Relations Theory* (London: Collier Macmillan Publishers, 1987) p. 207

⁹⁹ J. Baylis and S. Smith, *The Globalization of World Politics: An Introduction to International Relations* 2nd ed (New York: Oxford University Press, 2001) p. 191

potential for long-term benefits. Conflict or war between states is not inevitable, but rather can be caused by bad structural and institutional arrangements¹⁰⁰.

The neo-liberalists position holds true in Africa integration experience. Many of the regional integration schemes in Africa, Oyedije points out, had been established with the implicit or explicit objectives that they would promote intra-regional trade and industrialization. However, these objectives were often not achieved either because the necessary liberalization within the region did not, in fact occur, the individual member countries were not prepared to give up their own national level import-substitution industrialization strategy in favour of the regional programme, or the regional market was, in reality, much too small to provide a meaningful basis for the experiment¹⁰¹. This demonstrates that state have motivations for cooperation but institutional mechanism may pose a challenge to achieving the goals of cooperation.

2.2 Theory and Practice: Lessons from the Experience of Regional Integration in East Africa

The theories discussed above have their strengths and weaknesses that their proponents try to mitigate in order for the theories to describe the reality as sufficiently as possible. The following section evaluates the relevance of the theories discussed to the integration process in East Africa.

¹⁰⁰ D.S. Papp, *Contemporary International Relations: Frameworks for Understanding* 2nd ed. (London: Collier Macmillan Publishing, 1988) p. 8

¹⁰¹ T. Ademola Oyejide *Policies for Regional Integration in Africa*. cit p. 14

2.2.1 The Role of the State

Functionalism asserts the obsolescence of the State as a form of social organization¹⁰². On the contrary, neo-realism holds that states are actors in anarchy, which is the absence of any authority above states, and consequently the absence of any authority to mediate conflicts on an international level.

On the other hand, neo-functionalism assumes a decline in importance of nationalism and the nation-state; seeing the executive power and interest groups within states to be pursuing a welfarist objective which is best satisfied by integration. Neo-functionalists claim that, as the process of integration gathers pace, interest groups and associations within the pluralistic societies of the individual nation states transfer their allegiance away from national institutions towards the supranational institutions. They do this because, in theory, they realize that these newly formed institutions are a better conduit through which to pursue their material interests than the pre-existing national institutions.

Inter-governmentalism is an alternative theory of political integration, where power in international organizations is possessed by the member-states and decisions are made by unanimity. Independent appointees of the governments or elected representatives have solely advisory or implementation functions. The theory suggests that governments control the level and speed of integration. Any increase in power at supranational level results from a direct decision by governments. It thus rejects the idea

¹⁰² B. Rosamond, *Theories of European Integration* op. cit., p. 93

that supranational organizations are on an equal level (in terms of political influence) as national governments¹⁰³.

It is widely acknowledged that economic integration has altered the role of the state and the concept of sovereignty in international law. Intensifying economic interdependence has rendered sovereignty almost meaningless for an isolated state. Economic integration, and the consequent deepening of multilevel international economic interdependence, is the most powerful force propelling the transformation of the contemporary international system¹⁰⁴.

The international system can no longer be seen in classical realist terms as a community of hard-shelled and self-sufficient sovereign states selfishly pursuing their own interests without regard to the actions and policies of others. Rather, the inexorable progress of economic integration has penetrated state borders, making the state a porous and vulnerable entity transcended by transnational activities and forces.¹⁰⁵

Indeed, as Jackson argues, national and international authorities often appear to be at the mercy of international currency and bond traders, as the information age has brought with it the ability to transfer massive amounts of money anywhere in the world virtually instantaneously. Private Citizens within states are becoming more directly affected by economic forces beyond their countries' boundaries¹⁰⁶. In these circumstances, sovereignty has become almost meaningless or irrelevant for an isolated state.

¹⁰³ A. Moravcsik, 'Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach' *Journal of Common Market Studies* Vol. 31 No. 4 (1993) p. 10

¹⁰⁴ Eastwood R.A. & G.W. Keeton, *The Austinian Theories of Law and Sovereignty* (London: Methuen, 1929) p. 6

¹⁰⁵ J. Spanier, *Games Nations Play: Analyzing International Politics* 3rd ed. (New York: Praeger Publishers, 1978) p. 15

¹⁰⁶ J. Jackson., *Restructuring the GATT System* (New York: Council on Foreign Relations for the Royal Institute of International Affairs, 1990) p. 53-54

Even though functionalism prescribes that in the process of integration, sovereign rights are transferred from the state to functional organizations and that loyalties are transferred to these organizations because they better satisfy individual needs¹⁰⁷, the reality is that in East Africa, political leaderships have jealously guarded their sovereignty and have been unwilling to reduce the power and authority of the state. Wanyoto notes that the mindset emphasizing national interests and positions rather than regional interests prevails which is holding up progress of regional integration. She called for reinforcement of a new mindset of thinking and acting in East Africa¹⁰⁸.

2.2.2 Functionality

Functionalism posits that state-theories were built upon assumptions that identified the scope of authority with territory aided by methodological territorialism¹⁰⁹. It then proposed to build a form of authority based in functions and needs, which linked authority with needs, scientific knowledge, expertise and technology. Therefore, it provided a supra-territorial concept of authority¹¹⁰. It holds that the benefits rendered by the functional agencies would attract the loyalty of the populations and stimulate their participation and expand the area of integration¹¹¹.

This theory has been reflected in the history of integration in East Africa. Several institutions were set up under the EAC I to accomplish specific functions in different areas. The Agriculture and Forestry Research Organization stationed in Kenya dealt with research into the possibilities of better production of cash and food crops in East Africa

¹⁰⁷ A. Nyong'o, *Regional Integration in Africa: Unfinished Agenda* op. cit., p. 25
¹⁰⁸ L. Wanyoto, Member of the Assembly, Uganda, to the Committee on Fast Tracking East African Federation Hearings op.cit
¹⁰⁹ J.A. Scholte, *International Relations of Social Change* op. cit., p. 15
¹¹⁰ B. Rosamond, *Theories of European Integration* op. cit., p. 121
¹¹¹ E. Haas, *Beyond the Nation-State: Functionalism and International Organization* op. cit., p. 30

while the Veterinary Research Organization at the same place carried out research into animal diseases, produced vaccines and carried out crossbreeding experiments between local and exotic breeds. The East African Airways Corporation in Nairobi provided air transportation on a commercial basis for East Africa and linked the three countries with each other by operating domestic routes. In addition, the Directorate of Civil Aviation was responsible for directing all civilian flights within the East African flight information region. It trained its own air personnel at its school of aviation, based at Wilson Airport, Nairobi and a flying school at Soroti, Uganda¹¹².

The Court of Appeal for East Africa at Kampala, Nairobi, Mombasa and Dar es Salaam was the highest appeal body in East Africa for criminal and civil cases. Nevertheless, this court had no jurisdiction in Zanzibar. The East African Development Bank had an authorized share capital of 400 million shillings, the greater part of which was contributed by the partner states. It participated in development projects aimed at bringing about industrial development by providing financial and technical assistance. Other functional bodies of the EAC I included the Freshwater Fisheries Organization, the Marine Fisheries Organization, the East African Harbours Corporation the Industrial Research Organization, the Leprosy Research Centre the East African Literature Bureau, the Institute of Malaria and Vector-Borne Diseases, the Institute for Medical Research, the Meteorological Department, the Tropical Pesticides Research Institute, the East African Posts and Telecommunications Corporation, the East African Railways, the Income Tax Department, the Trypanosomiasis Research Organization, the Statistics Department and the Virus Research Institute located in Uganda¹¹³.

¹¹² N. Ng'eno et al, *Regional Integration Study of East Africa: The Case of Kenya op.cit* p. 23

¹¹³ Ibid

There are some key institutions that survived the collapse of EAC I, and have been redesigned as institutions of EAC II. These include the East African Civil Aviation Academy, Soroti; the East African Development Bank; the East African School of Librarianship; the Inter-University Council for East Africa; and the Lake Victoria Fisheries Organization. One remarkable institution is the Eastern and Southern African Management Institute (ESAMI), which is based at Njiro Hill, Arusha. ESAMI was originally the EAC Staff Institute, designed, as the name suggests, as a training and development institute for EAC staff. The East African Court of Justice (EAJC) exists to ensure adherence to law in the interpretation and application of the Treaty while the East Africa Legislative Assembly (EALA) is the Community's legislative organ, charged with enacting legislation, debating and approving the budget, overseeing the functioning of the EAC and actively representing the population in the integration process¹¹⁴.

EAC II put in place new institutions as well. They are the Directorate of Customs and Trade, the EAC Committee of Trade Remedies and the Lake Victoria Basin Commission¹¹⁵. However, since 2004, efforts have been directed towards fast tracking the achievement of a political federation by 2010¹¹⁶. Consequently, functional spill over as postulated by the functionalists may be by-passed.

2.2.3 Stages of Integration

Neo-functionalists propose that initially, states integrate in limited functional or economic areas. Thereafter, partially integrated states experience increasing momentum for further rounds of integration in related areas. They refer to this as spill-over effects. In

¹¹⁴ P.A. Kasaija, 'Regional Integration: A Political Federation of East African Countries?' *African Journal of International Affairs* Vol. 7, Nos. 1&2, 2004, pp. 21-34:26

¹¹⁵ A. Nyong'o, *Regional Integration in Africa: Unfinished Agenda* op. cit., p. 7

¹¹⁶ EAC, *Report of the Committee on Fast Tracking East African Federation* Op. Cit. p. 81

this sense, political spillover would be accomplished through a process of loyalty transference from the nation state to the high authority. Although integration can be resisted, it becomes harder to stop integration's reach as it progresses.

On the other hand, inter-governmentalism rejects the concept of the spillover effect that neo-functionalism proposes. The theory does not agree that economic integration could lead to political integration since it views economics and politics as relatively independent from each other.

As provided for in Article 5 of the Treaty, the EAC is aimed at culminating to a political federation in the region. It is envisaged that the process will include the establishment of: a customs union, a common market, a monetary union and ultimately a political federation. According to the Treaty, The objectives of the community shall be to develop policies and programmes aimed at widening and deepening cooperation among partner states in political, economic, social and cultural fields, research and technology, defence, security and legal and judicial affairs, for their mutual benefit. The Treaty establishes a number of organs and institutions to perform the functions of the Community. These are the Summit, Council, coordination committee, sectoral committees, the East African Court of Justice, the East African Legislative Assembly and the Secretariat¹¹⁷.

In its Treaty, the EAC a functionalist approach is embraced: creation of a customs union was considered the entry point followed by a common market, a monetary union, and ultimately a political federation of the EAC states¹¹⁸. Therefore, real economic

¹¹⁷ East African Community, *Treaty Establishing the East African Community* op. cit p. 12-13

¹¹⁸ N. Ng'eno, K (et al), *Regional Integration Study of East Africa: The Case of Kenya* Op. Cit. p. 8

integration in the region began with the coming into being of the Customs Union in 2005. Negotiations to establish the East African Common Market are underway.

2.2.4 Gains of Integration (Absolute and Relative)

Neo-realists hold that states cooperate when their relative gains are highest. Relative gains are the measurement of the gains of two or more states in relation to each other. It is a measure of which state gained *the most* from the venture. For neo-realists this is extremely important, for today's friend may be tomorrow's enemy in war, and an individual state's survival is its paramount concern¹¹⁹. In contrast to the neorealist preference for understanding cooperation in terms of relative gains in what might be a zero-sum game, neo-liberals view the interactions of states as a positive-sum game in which all the potential players could stand to benefit from absolute gains¹²⁰.

In the practice of integration in EAC1, the neo-realist contention seems to hold. For example, the political and external problems leading to the collapse of the EAC I largely resulted from the fact that Kenya was receiving a disproportionate share of the benefits of integration. Foreign corporations used Kenya as a base to export to the rest of the region, aggravating the trade imbalance and making it virtually impossible to secure an equal distribution of the benefits of trade¹²¹. The compensation mechanism put in place to address this imbalance proved ineffective and didn't produce the results Uganda and Tanzania wished. In addition, expectations about compensation and balanced

¹¹⁹ D.A Baldwin, *Neorealism and Neoliberalism* op. cit., p. 118

¹²⁰ D.A Baldwin, *Neorealism and Neoliberalism* op. cit., p. 117

¹²¹ N. Ng'eno et al, *Regional Integration Study of East Africa: The Case of Kenya* op. cit., p. 102

development differed within the community. Various measures were tested to redistribute the gains from the common market¹²².

However, in the new EAC, the neo-liberal contention holds as mechanisms are being put in place to ensure that all members gain. In the current setting, the customs union protocol required that Kenya eliminate its tariffs on imports originating in Tanzania and Uganda respectively with immediate effect on day one of the protocol implementation. However, charges of gradually declining taxes remain for 859 products originating from Kenya and exported to Tanzania and 426 products originating from Kenya and exported to Uganda, based on the asymmetry principle. These taxes started to gradually decline from 5% in 2005 and will reach 0% in 2010¹²³.

2.2.5 National Interests

An issue that goes hand in hand with gains from integration is the pursuit of national interest in the course of an integration framework. Functionalism argues that rather than the self-interest of nation-states that realists propagate, common interests and needs shared by states (but also by non-state actors) in a process of global integration are the main motivating factors. On the contrary, neo-functionalists purport that integration goes as far as member states want it to go. Besides, inter-governmental institutions exist due to the deliberate will of member states to satisfy their interests and are instruments for achieving member states' objectives. The integration level such as the European one is the location where member states strategically bargain their interests, defined within domestic level negotiations. Similarly, neo-realists assert that every state is in a self-help

¹²² R I. Onwuka and A. Sesay, *The Future of Regionalism in Africa* (New York: St. Martin's Press, 1985) p. 176

¹²³ K.. Buberwa, 'The Achievements and Challenges of the New East African Community Co-operation' Research Memorandum No. 58 June 2006 p. 9

situation and every actor is ultimately pitted against every other actor in pursuit of its own interests¹²⁴.

The degree to which any state can cooperate with any other state is limited by the pursuit of a state's core interest. Neo-liberalists support this view by asserting that the state is a "*rational egoist*" who will seek maximum personal utility in any action or interaction in which it is involved¹²⁵.

In the case of regional integration in East Africa, actors whose interests may have affected the process included not only the member states of the community but the countries facilitating the integration as well. Kamanga asserts that the genesis of the EAC lies in the British colonial strategy of imperial domination of the Eastern African region, with Kenya as the hub of regional British imperial power. He argues that Britain's initial interest in East Africa was influenced by the anti-slavery crusade. Soon, however, a more decisive, enduring impetus arose: the desire to secure 'control of the headwaters of the Nile in order to protect the position of Britain in Egypt and the Suez Canal, in particular. Subsequently the pre-eminent interest became opening up the region to the highly exploitative and profitable large-scale farming, and attendant commerce and industry'¹²⁶.

Moreover, occupying East Africa meant that German imperial designs in the region would be checked and opening up the Kenyan hinterland by rail transport would introduce the lucrative large-scale farming. No wonder that from a mere British sphere of influence subject to direct British rule, East Africa quite rapidly became a fully-fledged,

¹²⁴ Viotti and Kauppi, *International Relations Theory* op. cit., p. 48-49

¹²⁵ Keohane and Nye, *Transnational Relations and World Politics* op. cit., p. 74

¹²⁶ K. Kamanga, 'Some Constitutional Dimensions of the East Africa Co-operation' in J. Oloka-Onyango (ed.), *Constitutional Development in East Africa for Year 2001* (Dar es Salaam: E & D Ltd., 2003) p. 13

de jure colonial possession. And indeed, for the avoidance of doubt, the 'East African Protectorate' was in 1920 'elevated' to the 'Kenya Colony'.¹²⁷

Nonetheless, integration can be said to exist when units join together in order to satisfy objectives which they cannot meet autonomously. In this way, integration can be a process which hastens up the achievement of certain objectives in the interest of a larger body. Such a process would involve the shifting of loyalties, expectations and political activities towards a supranational body.

The report of the EAC Fast Tracking Committee reports that fear of loss of sovereignty is an issue in the minds of the some members of the political elites of East Africa. The fear is that as a federation, the nation states would cease to have any meaningful powers; that they would be relegated to mere provinces within the federation¹²⁸. Nyanduga also notes that the East African regional integration is currently too much driven by national interests and positions but in order to succeed with instituting a federation, regional agenda must prevail¹²⁹. The objective therefore is to ensure that one's own interests are well taken care of in the guise of attempting to achieve regional collective interests.

2.3 Conclusion

The purpose of theory is to describe what has happened, explain why it has happened and predict how the trend or movement described and explained will evolve into the future. On the one hand, the Realists argument that the anarchic world order lacks an over-riding sovereign authority which can bind individual states to a regime of cooperation, holds

¹²⁷ *Ibid.*, p. 17

¹²⁸ EAC, *Report of the Committee on Fast Tracking East African Federation*, *op.cit.* p. 81

¹²⁹ T.B. Nyanduga, President, East Africa Law Society to the Committee on Fast Tracking East African Federation Hearings *op.cit*

some water. Thus, the absence of an overarching world authority means that states are unable and unwilling to cooperate even where such cooperation would be to every state's individual advantage¹³⁰.

On the other hand, Neo-functionalists disagree, and rightly posit that institutionalisation of inter-states relations could diminish the idea of anarchy. There may be institutions embodying conventions, rules and established practices which serve to stabilise inter-state relations. They bring a certain amount of order, predictability and rule-guidedness to international affairs¹³¹. Thus, it is evident that the theories of integration discussed in this chapter have managed to account for some aspects of regional integration in Africa and failed to account for others.

It is worth noting that regional integration has been a stronger force in East African politics than in many other parts of Africa¹³². As Oyejide observes, in reality, most African regional integration schemes have not achieved full integration; and the domestic policy in individual member countries have also been generally at variance with the ideals of harmonized and coordinated pursuit of regional objectives. More generally, a survey of African regional integration schemes suggests that the design and implementation of many of the arrangements in effect actually constrain rather than promote integration. In addition, non-compliance with and delayed implementation of agreed trade liberalization schedules have not enhanced intra-regional trade expansions; while in many cases, the chosen instruments of integration are virtually guaranteed to discourage rather than promote intra-regional trade. Taken together, these problems show

¹³⁰ C. Pierson, *The Modern State*, op.cit p. 135

¹³¹ R. O Keohane, *International Institutions and State Power* (London: Westview Press, 1989) p. 9

¹³² P. Kasajja, 'Regional Integration: A Political Federation of the East African Countries?' *op.cit.* p.27

that Africa's regional integration schemes have generally not been fully implemented as designed¹³³.

Theories of integration are relevant to the integration process in Africa and East Africa in particular, but they do not sufficiently describe the events thereof. Therefore, more should be borrowed from practice in order to amend these theories. To enhance regional integration in Africa, it is imperative to borrow the positive contributions of all the theories to overcome the challenges facing such schemes today. Realism may be successful in explaining to us 'what is' but neo-functionalists can also help us in understanding what regional integration 'can be or should be' and how we can work to achieve it for the benefit of the continent in the current context of globalisation.

Nevertheless, they provide a suitable guide to the evaluation of integration in the East Africa region. As Oyejide asserts, what seems to be beyond debate is that new approaches to regional integration in Africa must explicitly recognize the difficulties that frustrated previous attempts and thus reflect appropriate lessons drawn from past experience both in Africa and elsewhere¹³⁴.

¹³³ T. Ademola Oyejide Policies for Regional Integration in Africa, *op.cit.* p 9

¹³⁴ *Ibid* p.11

CHAPTER THREE

Review of Integration Efforts in East Africa

3.0 Introduction

Most peoples' lives are grounded in local and national contexts and conditions. Yet, more often, those lives are shaped by events, decisions and politics beyond national borders. People pay taxes for local and national healthcare, but some of the gravest threats to health arise from infectious diseases that respect no borders. Among other reasons, people vote for governments on the basis of their economic and fiscal policy, but those policies are heavily constrained by international financial, trade and investment circumstances¹³⁵.

These global issues pose special challenges. In broad terms, the goals are widely shared, and all states have national interests in achieving them; but in most instances no state and no private actor, however rich and powerful, can achieve them alone. Only by acting together, by cooperating across borders, can problems like these be effectively and efficiently addressed. International cooperation is in the national interest of all states.¹³⁶ However, it is also noted that national interest can pose problems to cooperation amongst states.

The previous chapter reviewed regional integration theories and their relevance to the East African experience. This Chapter will review efforts towards regional integration in East Africa. It will also focus on the reasons why the old EAC failed and assess whether national interest was a cause of its collapse.

¹³⁵ J. Baylis and S. Smith, *The Globalization of World Politics: An Introduction to International Relations*

op cit. p. 9

¹³⁶ *Ibid.*, p. 11

3.1 Regional Integration in East Africa

Integration in East Africa goes back in time to the pre-colonial period¹³⁷. Despite its humble beginnings in informal situations, East African integration grew into the strongest regional integration community in Africa. This section draws the historical trajectory of integration efforts in East Africa from their origins to date. To study and to evaluate regional integration in East Africa and indeed the emerging EAC Law without considering the determinant historical, political and economic forces would be to gain a very limited understanding of the subject. Mukandala divides the historical development of the East African Community (EAC) into five phases¹³⁸. In looking at the historical trajectory of regional integration in East Africa, the following section describes these phases.

3.1.1 Kenya and Uganda: Up to 1920

The late nineteenth century was characterised by merchant capitalism, which established trading networks throughout East Africa. On the other hand, the twentieth century was overwhelmed by the spirit of industrial capital for which East Africa was both a market for European manufactures and a source for raw materials and human resources whose aim was to create wealth to alleviate the economic problems of metropolitan Europe. European colonists in East Africa embarked on a program of systematic integration of the region. For instance, in 1902, the British established the Court of Appeal for East Africa, followed by the setting up the East African Currency Board in 1905 and a Postal Union between Kenya and

¹³⁷ N. Ng'eno et al, *Regional Integration Study of East Africa: The Case of Kenya op.cit.* p. 23

¹³⁸ R. Mukandala, 'Political Cooperation,' in *Perspectives on Regional Integration and Cooperation in East Africa* (Arusha: EAC Secretariat, 2000) pp. 89-91: 89

Uganda in 1911. In 1917, the British colonial administration established a Customs Union. By 1920, the East African Currency Board (EACB) was already issuing a single regional currency¹³⁹.

3.1.2 The entry of Tanganyika: 1920s to 1960

When Tanganyika was transferred from German to British control, the country used the common currency already established. Thus the British attempted to harmonise their administration and control of native affairs in East Africa. They argued that a stronger political union would be a prerequisite for economic integration of East Africa¹⁴⁰. The second phase thus involved the creation of the East African Common market with a customs arrangement between Uganda and Kenya (then British East Africa) on one hand and Tanganyika (then German East Africa) on the other¹⁴¹.

In 1925, the a British Parliamentary Commission recommended a customs union for the three countries; uniformity of commercial law on companies, bankruptcy, patents, design and trademarks; creation of a central research institute at Amani in Tanganyika, to serve all three countries; and operation of the Voi-Kahe railway line by the Kenya-Uganda Railway Corporation¹⁴².

In 1926, a Permanent Secretariat was set up in Nairobi, which shared the services of the Kenya Statistical Adviser on East African Statistics. It also discussed many matters of common interest, such as the desirability of three inter-territorial fundamental research

¹³⁹ O. Hannington, 'Rethinking East African Integration: From Economic to Political and from State to Civil Society' *Africa Development*, Vol. XXIX, No. 2, 2004, pp. 53–79: 58

¹⁴⁰ *Ibid* p. 58

¹⁴¹ P. Kasaija, 'Regional Integration: A Political Federation of the East African Countries?' *op.cit.* p. 28

¹⁴² W. Lawrukwa, G. Mjema and R. Rutasitara, *A Regional Integration Study of East African Community* (Arusha: EAC Secretariat, 2002) p. 41

stations: Amani (Tanganyika) for agriculture, Kabete (Kenya) for veterinary research, and Entebbe (Uganda) for trypanosomiasis¹⁴³.

In 1927, administration of the port of Mombasa, which had until then been administered by the government of Kenya, was transferred to the Kenya-Uganda Railway Corporation, the name of which was altered to the Kenya-Uganda Railways and Harbours Corporation. In 1929, the East African Meteorological Department was established, and this operated inter-territorially under the Governors' Conference¹⁴⁴.

In 1931, the a Joint Select Committee of both houses of parliament reported the rejection of a single federal high commissioner, but emphasized that the machinery of the Governors' Conference should be increasingly used to ensure continuous and effective cooperation and coordination of all matters of interest. Such areas included transport, customs duties and administration, scientific and technical research services, posts and telegraphs, commercial law and defence¹⁴⁵.

Consequently, the Posts and Telegraphs Departments of Kenya, Uganda and Tanganyika were amalgamated into a single service under one postmaster general in 1933. Income tax was first introduced in 1937 in Kenya. It was extended to Uganda and Tanganyika in 1940 and the Joint East African Income Tax Board was set up to handle its administration. Inter-territorial veterinary research became a reality in 1939 when a central research organization, which had been envisaged back in 1926, was set up in Kabete¹⁴⁶.

¹⁴³ A. Hazlewood, *The End of the East African Community: What are the Lessons for Regional Integration Schemes?* in R.I. Onwuka and A. Sesay eds.)*The Future of Regionalism in Africa* (London: Macmillan Publishers, 1985) p. 175

¹⁴⁴ A. Mullei, 'Integration Experience of East African Countries' paper presented at the symposium marking the 30th anniversary of banco de Moçambique

¹⁴⁵ J. Ravenhill "The Future of Regionalism in Africa" in R. I. Onwuka and A. Sesay, op cit. pp. 207-8

¹⁴⁶ W. Lawrukwa, G. Mjema and R. Rutasitara, *A Regional Integration Study of East African Community* op. cit., p. 47

The Second World War (1939–1945) expedited the establishment of several inter-territorial bodies, including the East African Industrial Council and Industrial Research Board, all designed to meet the defensive needs of the region. The Governors' Conference Secretariat also became the channel through which liaison was maintained between service commanders and civil governments¹⁴⁷.

In 1945, the British government put forward proposals to overcome the defects inherent in the Governors' Conference system, to rationalize the structure of the various East African bodies and to give them a legislative and constitutional background. These included the creation of an East African High Commission and a central legislature, a single Customs and Excise Department and a single Railways and Harbours Administration.¹⁴⁸

During the process of public discussion of these proposals, three further common services were started. These were the Directorate of Civil Aviation, the East African Fisheries Research Organization (both launched in 1946) and the East African Literature Bureau (launched in 1947). After public discussion, revised proposals were made in 1947. These were accepted, and as a result, Tanganyika Railways was amalgamated with Kenya-Uganda Railways and Harbours to become East African Railways and Harbours. Consequently, various EAC entities and services not already in existence took shape¹⁴⁹.

The second period peaked in 1948, when a quasi-federation was established with a common market and various common services as noted above. In the earlier part of this phase, decisions were made by the colonial powers and supplemented by the governors via administrative fiat. In the latter part, the 1947–1961 East Africa High Commission Orders in Council were used as the tools to undertake matters and services of common interest to the

¹⁴⁷ P. Kasaija, 'Regional Integration: A Political Federation of the East African Countries?' *op.cit.* p. 29

¹⁴⁸ N. Ng'eno et al, *Regional Integration Study of East Africa: The Case of Kenya* *op. cit.*, p. 23

¹⁴⁹ *Ibid.*, p. 26

three countries. Among other things, they were used to establish the East Africa High Commission and the East Africa Central Legislative Assembly¹⁵⁰.

3.1.3 Independence: 1961–1977

The third phase began when the East African Common Services Organization (EACSO) was established in 1961 to replace the High Commission (formed 1948), now rendered politically unacceptable following one of the territories (Tanganyika) having attained 'independence' from Britain. Being a result of the Raisman Commission which had been set up to review the structures of East African cooperation, the major aim of EACSO was to centralise the administration of East Africa's customs, excise and revenue authorities; currency, land, sea and air transport; telecommunication; and education¹⁵¹.

The desire to preserve the common services on the approach of Tanganyika's independence in 1961 stemmed partly from experience of their success, and partly from a spreading and genuine feeling among the people and political leaders in favour of African unity, and more particularly East African unity. Furthermore, Tanganyika won her independence before the other two countries, and by the political arrangement for the proposed EACSO, it was necessary to ensure that her sovereignty could not be infringed by the colonial authorities. In expectation that all three countries would shortly be independent, EACSO was set up on Tanganyika's attainment of independence in December 1961. In view of the prospect of considerable withdrawal of support from the colonial power, arrangements were made to give EACSO its source of finance in a general fund. This fund comprised 3 per cent of all customs and excise revenue collected in the three countries and 20 per cent of the

¹⁵⁰ A. Mullei, 'Integration Experience of East African Countries' op.cit

¹⁵¹ M. Nyirabu, 'Lessons from the East African Community of 1967-1977,' in Ahmed Mohiddin (ed.), *Deepening Regional Integration of the East African Community* (Addis Ababa: DPMF, 2005) pp. 21-44:24

tax of the profits of all companies engaged in manufacturing and finance throughout East Africa¹⁵².

The acceptance of the EACSO constitution was spurred by the desire of the three East African countries to come closer together in the form of a political federation. In fact, Mwalimu Nyerere of Tanzania suggested that he would delay Tanganyika's independence for a year to wait for Kenya and Uganda so that the federation would be established. In June 1963, the leaders of the three countries met in Nairobi, Kenya and agreed to establish a federation. As a result, a Working Party Committee on East Africa Federation that was established drew up a Draft Constitution for the Federation.¹⁵³

Indeed, like the British colonists, the East African leaders of the post-colonial state hoped to create a stronger economic entity of the sub-region grounded in a federation. Yet the constitution and institutional arrangements, which they inherited at independence, have proved so far to be major impediments in realising their goals. Each of the three countries entered the era of independence with its own specifically defined national goals – goals that would impact the process of integration thereafter. The East African countries emphasised different development strategies after independence¹⁵⁴.

For instance, at the time a federation would have become a reality, the Prime Minister of Uganda, Dr. Apollo Milton Obote took the stance that the idea of federation had been put

¹⁵² P. Anyang' Nyong'o, (ed.) *Regional Integration in Africa: Unfinished Agenda op.cit.* p. 17

¹⁵³ B. Munanka, *EALA Report of Select Committee on East Africa Federation (Munanka Report)* (Arusha: East African Community, 2002) p. 43

¹⁵⁴ O. Hannington, 'Rethinking East African Integration: From Economic to Political and from State to Civil Society' *op.cit.* 63

forward as an argument to speed Kenya's independence. He had added that, the site for the federal capital had not yet been discussed, nor who was to head the federation¹⁵⁵.

There are various arguments that have been advanced for the failure of the federation idea in 1963. Events of the first year did not bear out this sentiment and it soon became evident that the preconditions for unity were fast disappearing. One of the problems may have stemmed from the organizational structure of EACSO since major decisions had to be taken by five ministerial committees which only met infrequently and which consisted of national ministers who were already overburdened with national responsibilities. Temporary members often had to deputize for the substantive members whenever the former were unable to attend, which made it difficult to arrive at unanimous decisions. This situation sometimes led to long delays or even disagreements among members¹⁵⁶.

Besides, the economic pattern that had been fostered in the three countries also engendered trouble. The location in Kenya of most of the common services' headquarters, though desirable for administrative coherence, gave rise to the feeling that Kenya was having the lion's share. Further, in view of Kenya's advancement in manufacturing industries, the common market that had developed during colonial administration in East Africa was manifestly more advantageous to Kenya than the other two countries¹⁵⁷.

Consequently, East Africa was faced with a choice: either to break up the common services arrangements, or to develop a pattern of economic cooperation that would prove more acceptable to all its partners. Attempts were made to address the imbalances by signing the

¹⁵⁵ K. G. Adar and Ngunyi, M., 'The Politics of Integration in East Africa Since Independence', in W.O. Oyugi, (ed.), *Politics and Administration in East Africa* (Nairobi: East African Educational Publishers, 1994) p. 56

¹⁵⁶ J. Banfield, 'The Structure of the East African Common Services Organization', in D. Rothschild (ed.), *Politics of Integration: An East African Documentary* (Nairobi, East African Publishing House, 1968) p. 35

¹⁵⁷ W. Odhiambo, 'Equity Issues in Regional Trade Arrangements: The Case of EAC in The Making of a Region' in A. Rok (ed.), *The Revival of the East African Community* (South Africa: Institute of Global Dialogue, 2005) p. 86

Kampala Agreement in 1964. The agreement sought to decrease trade deficits and industrial imbalances between Uganda and Tanzania. Additionally, it advocated industrial policies of allocating new industries to Tanzania and Uganda so as to increase production in the two countries, thereby reducing imports from Kenya. The agreement was never implemented partly because Kenya refused to ratify it by insisting among other things that one single currency be maintained in East Africa, a condition that was unacceptable to the partners.¹⁵⁸

In November 1965, the EACSO – the highest political arm of the common services – announced the decision to appoint a Special Commission (Phillip Commission) consisting of three ministers from each country to examine and recommend ways of strengthening East African cooperation, the common market and the common services. The Commission held its meetings in rotation between Nairobi, Kampala, Dar es Salaam and Arusha before the Treaty for East African Cooperation was presented for signature to the presidents of Kenya, Uganda and Tanzania at Kampala on 6 June 1967. Broadly speaking, the Treaty established the East African Community and a common market as an integral part of the EAC, and set 1 December 1967 as the date on which this arrangement would come into force¹⁵⁹.

The Phillip Commission also proposed the maintenance of a common tariff against foreign goods entering the region, however unlike in the past, custom duty was to be paid to the consuming state rather than to the port of entry, which was usually Kenya. Secondly, with respect to industrialisation, it recommended the maintenance of the licensing scheme created under the Kampala Agreement with incentives whereby Tanzania was unequivocally granted the authority to establish three industries, while Uganda and Kenya were to establish two

¹⁵⁸ M. Nyirabu, 'Lessons from the East African Community of 1967-1977,' in Ahmed Mohiddin (ed.), *Deepening Regional Integration of the East African Community* op. cit., pp. 21-44:25

¹⁵⁹ A. Hazelwood, 'Economic Integration: Lessons for African Recovery and Development', in Adedeji Adebayo et al. (eds.), *The Challenge of African Economic Recovery and Development* (London, Frank Cass, 1992) p. 107

industries and one industry, respectively. Thirdly, it recommended the creation of the East African Development Bank (EADB) with the key aim lending investments funds to the three states with special bias in favour of Uganda and Tanzania¹⁶⁰.

Among the pivotal organs it established in the 1967 Treaty were the East African Authority, the Committee of East African Ministers, the Secretariat, the East African Legislative Assembly, the Ministerial Councils and the East African Development Bank. The Community further 'took over' nearly the entire range of joint services institutions belonging to the erstwhile EASCO¹⁶¹.

Suffice it to note that the decolonisation process in the three territories made it difficult to attempt a supranational unification. The decolonisation process had planted seeds of national consciousness – a sense of ideological and national interests of the individual leaders and states. In the debates on the nature of integration, much energy was consumed by the demands for nation building as pitched against the federation scheme¹⁶². Essentially, East African leaders were not ready to forfeit their political and economic sovereignty – they certainly were not ready for regional integration. Also the deep involvement of the state and the emphasis it laid on the economic gains from the integration militated against the success of the EAC¹⁶³.

3.1.4 Collapse of the EAC1: 1977–1991

As the health of the EAC deteriorated, there were concerted efforts, both within and outside of the partner states to resolve the thorny issues, revive the Community or at least preserve some

¹⁶⁰ D. Bach, *Regionalization in Africa: Integration and Disintegration* (Oxford: James Curry Ltd, 1999) p. 27

¹⁶¹ J. Banfield, 'The Structure of the East African Common Services Organization', in D. Rothschild (ed.), *Politics of Integration: An East African Documentary* op. cit., p. 36

¹⁶² O. Hannington, 'Rethinking East African Integration: From Economic to Political and from State to Civil Society' *op.cit.* p.64

¹⁶³ *ibid.* p. 67

of the gains made. Thus, in September 1977, while at a meeting in Washington DC, the three EAC finance ministers negotiated and signed a memorandum of understanding pledging to seek a solution to the EAC impasse, with the assistance of a mutually accepted mediator. In December 1978, even as the EAC headquarters in Arusha shut down, Dr Victor H. Umbricht, a Swiss diplomat, was accepted as the mediator. His efforts led to the signing, in 1984, by presidents Nyerere, Obote and Moi, in Arusha, of the Agreement for the Division of Assets and Liabilities of the former East African Community. Article 14 of the Agreement contained a commitment by the partner states to 'explore and identify further areas for future co-operation' (dubbed 'the Umbricht Clause' by Kamanga)¹⁶⁴.

In 1977 the Treaty for East African Cooperation establishing the EAC was officially dissolved when partner states withheld approval of the General Fund Services Budget for the year beginning 1st July 1977. Staff members returned to their home countries and the East African Headquarters in Arusha ceased to function¹⁶⁵.

The failure of this East African experiment, once heralded as the best model for Africa, offers hard lessons that will need to be borne in mind in any future attempt at further regional unity and economic integration in East Africa. These lessons can best be understood after a prime surgery of the causes for the collapse of EAC I discussed below.

3.2 Causes of the Collapse

3.2.1 Disagreements over the Benefits of Jointly-Owned Common Services

One of the reasons advanced for the collapse of EAC in 1977 was that Kenya was receiving a disproportionate share of the benefits of integration. Various measures were

¹⁶⁴ K. Kamanga, "Some Constitutional Dimensions of the East Africa Co-operation," *op.cit.* p.131
¹⁶⁵ *Ibid.* p. 127-128

tested to redistribute the gains from the common market, but failed to produce the results Uganda and Tanzania wanted¹⁶⁶.

For example, the East African Development Bank, which was to promote industrial development with the states contributing equally to its capital base, was required to ensure that Tanzania and Uganda each got 38.75 per cent of its investments, against 22.5 per cent in Kenya. However, under a risk-averse clause in its statutes, it could only finance 'viable' projects, most of which were in Kenya, especially during the 1971-1973 period. This greatly limited its role as a redistributive institution. The absence of coordinated industrial planning in EAC further limited the Bank's effect on redistribution. Under a tax transfer system, industries of less developed members were protected by imposing a tariff on imports from a country with which it had a trade deficit. There were regulations to encourage industries in Uganda and Tanzania, but location advantages kept pulling investors to Kenya¹⁶⁷.

In the end, the tax transfer system was replaced with mechanisms to distribute common services among member states. Even now with the revival of EAC, the issue of compensation mechanisms is still unresolved. Mwase argues that the common market system within East Africa favoured the Kenyan industrial base which was able to exploit considerably more to the neighbouring countries than vice versa; this led to marketing difficulties for Ugandan and Tanzanian products and to bitter complaints¹⁶⁸. Industrial

¹⁶⁶ L. Kasekende and N. Ng'eno, 'Regional Integration and Economic Integration in Eastern and Southern Africa' in A. Oyejide, I. El Badawi and P. Collier (eds.), *Regional Integration and Trade Liberalisation in Sub-Saharan Africa: Framework, Issues and Methodological Perspectives* (London: Macmillan Press Ltd, 2000) p. 82

¹⁶⁷ A. Nyong'o, *Regional Integration in Africa: Unfinished Agenda op.cit.* p. 20

¹⁶⁸ N. Mwase, 'The East African Community: A Study of Regional Disintegration' Paper 77.10 ERB, (Dar es Salaam: University of Dar es Salaam, 1979) p. 6

development produced employment opportunities in Kenya, but led to economic stagnation and underdevelopment in Tanzania¹⁶⁹.

But an integration scheme characterized by an acutely unfair distribution of gains was not the only legacy passed down by colonialism. The inherited integration model was essentially predicated on the dominant economic, political and ideological perceptions of British imperial rule. And as Onwuka and Amadu point out, "as long as the economies of the developing countries remain under the domination of foreign monopolies, real and proportional economic development cannot be ensured"¹⁷⁰. Rather than usher in genuine economic advancement of the colonized the strategy was to perpetuate the existing relations of economic domination.

3.2.2 Lack of Strong Political Leadership

The unequal enjoyment of benefits was the strongest manifestation of the insufficiency of political leadership in EAC I. This problem was on the table right from independence, yet it never resolved. Political leadership could not agree on how to manage the continued disproportionate sharing of Community benefits among partner states¹⁷¹.

In January 1971 Uganda and Tanzania were almost in a state of war, and on a number of occasions there were open hostilities between them. Nyerere's initial military and political support for ex-President Milton Obote, and more especially his refusal to recognise the legitimacy of Amin's regime, made it impossible for the East African Authority - the highest

¹⁶⁹ D.A.D Mbogoro, 'The Common Market Concept & Economic Development: Tanzania's Experience' Paper 77.8 ERB, (Dar-es Salaam: University of Dar es Salaam, 1978) pp. 20-21

¹⁷⁰ R. I. Onwuka and Amadu Sesay, *The Future of Regionalism in Africa op.cit.* p. 29

¹⁷¹ F. I. Nixon, *Economic Integration and Industrial Location: An East African Case Study* (Nairobi: Longman Publishers, 1973) p. 50

decision-making body of EAC I made up of the three Heads of State- to meet and sort out the differences which hampered the smooth functioning of the Community¹⁷².

Mutere asserts that, the new institutional machinery of the EAC lacked an autonomous body with at least power of initiative and supervision. Consequently, the East African regional institutions could hardly play a dynamic and mediatory role in harmonizing partner states' national interests. Also unfortunate was the composition of the supreme decision making body, the East African Authority, made up of the three countries' presidents. This increased the danger of transforming personal rivalries into more lasting inter-state conflicts¹⁷³.

3.2.3 Lack of Strong Private Sector and Civil Society Participation

The drafters (and signatories) of the 1999 Treaty, as well as other scholars and commentators, have reiterated that the old Treaty (and dispensation) was a government project that was neither rooted in nor involved the East African people. Thus, the East African people could neither really demand its implementation nor insulate it from challenges, threats or its eventual demise. The 1999 EAC treaty, under Art.127 provided that partner states are to promote, "an enabling environment for the participation of civil society in the development of activities within the community"¹⁷⁴.

3.2.4 Insufficient Financial Resources

In addition to weak political leadership, money was also a problem. The *coup de grace* however came in June 1977 when Partner States withheld approval of the General Fund Services budget for the year beginning July 1 1977. "The severance of access," writes Umbricht, "to funding marked the final demise of what had been a truly great concept. Staff

¹⁷² R. Mukandala, 'Political Cooperation,' in *Perspectives on Regional Integration and Cooperation in East Africa* op. cit., p. 91

¹⁷³ A. Mutere, 'Regional Cooperation and Anatomy of Conflict', *Southern Africa Political and Economy Monthly* Vol. 9, No. 7 (1996) pp. 8-9: 8

¹⁷⁴ EAC Secretariat, *The Treaty for the Establishment of the East African Community op.cit.* Article 127

members returned to their home countries and the [East African] Headquarters in Arusha ceased to function”¹⁷⁵.

3.2.5 Poor Institutional Ethos

In addition, as has been amply illustrated above, the genesis of the EAC was a British imperialist, extractive and exploitative project. It was never intended to be of the people, for the people, serving the people, let alone incorporating the people. Issues such as human dignity, equality, equity, fairness – especially in allocation of resources and enjoyment of benefits – never formed part of its ethos. This is not to say that no individuals espoused any of these attributes. Rather, it was never a completely shared, institutional goal, visibly practised in the day-to-day operations of the organization¹⁷⁶.

This is not unique; the lack of shared popular goals was seen in virtually all of the newly-independent African states. The experience of the ordinary African, but for two or three refreshing examples, has been that the only change is the skin colour of the oppressor; the modus operandi and even the objectives of the political leaders remain the same. These include clinging to power at all costs; surrounding and insulating the leadership with cronies and/or kinsfolk, appointing them to all the ‘plum’ or ‘sensitive’ positions; appropriating public resources for personal enrichment and patronage; and appropriating the state law enforcement and defence machinery for sustenance of power, subjugation of all opposition and oppression of the masses¹⁷⁷.

There were institutional shortcomings too and which were not unrelated to the ‘inability’ of the Authority the supreme policy making body to meet. At the centre of these

¹⁷⁵ V.H Umbricht, *Multilateral Mediation: Practical Experiences and Lessons*, (Dordrecht: Martinus Nijhoff Publishers, 1988) p.19

¹⁷⁶ W. Lawrukwa, G. Mjema and R. Rutasitara, *A Regional Integration Study of East African Community* op. cit., p. 48

¹⁷⁷ A. Aly, *Economic Cooperation in Africa: In Search of Direction* (Boulder: Lynne Rienner, 1994) p. 12

institutional problems were the influential East African Ministerial Committees and Councils. If any meetings were ever held, decisions took inordinately long to be reached or matters were simply left in abeyance. As a consequence individual Partner States found themselves intervening directly in the day to day operations of what was designed to be an autonomous institution with distinct legal personality¹⁷⁸. As Nyirabu argues, there is an undeniable reason why politicians should not be the principal driving force in regional integration. Politicians are sometimes more concerned with short-termism, public image, power, political clientelism and even wealth accumulation¹⁷⁹.

3. 2. 6 Ideology, Regional Conflict, and Systemic External Penetration

Differences in foreign policy approaches and outlooks had a marked impact on relations between the East African states. While Tanzania sought to widen the scope of its international relations by pursuing vigorously a policy of non-alignment in relations with the major power blocs (although its socialist ideology has struck an affinity with other, more orthodox, Marxist-Leninist states), Kenya tended to practise what might be called 'discretionary non-alignment' (a term popularised by Malawi's Dr H. Kamuzu Banda)¹⁸⁰.

Personal and ideological differences of the East African leaders precipitated the collapse of the EAC. Yet these ideological differences were merely a reflection of the political and economic separate paths the East African partners had chosen to follow. Tanzania chose to follow a socialist path, while Uganda contemplated moving toward the left (however, largely following a mixed economy). Kenya, on the other hand, embraced free market capitalism disguised as African socialism. The different political philosophies

¹⁷⁸ V.H Umbricht, *Multilateral Mediation: Practical Experiences and Lessons*, *op.cit.* p.18

¹⁷⁹ M. Nyirabu, 'Appraising Regional Integration in Southern Africa' *op.cit.* p. 26

¹⁸⁰ M. Henning (ed.) 'Trade, Development, Cooperation - What Future for Africa?' Series: *Current African Issues* No. 29, March 2005 p. 44

and economic policies came into conflict with one another and rendered the federation idea a spent force¹⁸¹.

3.3 The 'New' EAC: 1991 to Date

Following the dissolution of the former East African Community in 1977, the Member States negotiated a Mediation Agreement for the Division of Assets and Liabilities, which they signed in 1984. Under the agreement, the parties agreed to explore areas of future cooperation and to work out concrete arrangements for such cooperation and to make concrete arrangements for such co-operation¹⁸². At that time, Uganda and Kenya had new presidents, a factor which removed the acrimony which characterised the region prior to the collapse of the EAC in 1977.

In October 1991 at the Commonwealth Heads of Government Meeting (CHOGM) in Harare, Zimbabwe, a meeting of the three heads of state of East Africa resulted in a Decision of a Satellite East African Summit to revive East African Cooperation¹⁸³. Subsequently, on 22 November 1991, the Permanent Tripartite Commission for Cooperation was set up. The Commission was charged with the responsibility of promoting cooperation in various fields among the member states. It was further charged with the responsibility of coordinating the economic, social, cultural, security and political issues for closer East African cooperation¹⁸⁴. The leaders of the region also tasked the Tripartite Commission to speed up the process of

¹⁸¹ O. Hannington, 'Rethinking East African Integration: From Economic to Political and from State to Civil Society' *op.cit.* p. 68

¹⁸² EAC Mediation Agreement, 14th May 1984

¹⁸³ S. Tulya-Muhika, 'Revival of the East African Co-operation and its Institutional Framework,' in Mukandala Rwekaza, 'Political Cooperation,' in *Perspectives on Regional Integration and Cooperation in East Africa* (Arusha: EAC Secretariat, 2000) p. 24

¹⁸⁴ S. Kayunga, 'Deepening Political Integration of the EAC Countries: The Uganda Case,' in Ahmed Mohiddin (ed.), *Deepening Regional Integration of the East African Community* *op. cit.*, p. 152-153: 153

resolving outstanding issues of the defunct EAC as stipulated in the EAC Mediation Agreement of 1984¹⁸⁵.

From 1991, there was increased activity towards cooperation among the three East African states. In November 1993, the three heads of state signed the Agreement for the Establishment of a Permanent Tripartite Commission for Cooperation (PTC) between the United Republic of Tanzania, the Republic of Uganda and the Republic of Kenya. This agreement sought to revive cooperation among the three countries. Subsequently, in November 1994, the Kampala Protocol including provisions for setting up a permanent EAC Secretariat in Arusha was signed. Cooperation activities effectively commenced on 14 March 1996 with the launching of the Secretariat at the EAC headquarters in Arusha¹⁸⁶.

The Preamble of the Treaty notes that 1977 the Treaty for East African Cooperation establishing the East African Community was officially dissolved, the main reasons contributing to the collapse of the East African Community being lack of strong political will, lack of strong participation of the private sector and civil society in the cooperation activities, the continued disproportionate sharing of benefits of the Community among the Partner States due to their differences in their levels of development and lack of adequate policies to address this situation¹⁸⁷.

As provided for in Article 5 of the Treaty, the EAC is aimed at culminating to a political federation in the region. It is envisaged that the process will follow a neo-functional approach which will include the establishment of: a customs union, a common market, a monetary union and ultimately a political federation. According to the

¹⁸⁵ N. Mohabe, 'Lessons from the East African Community of 1967-1977,' in Ahmed Mohiddin (ed.), *Deepening Regional Integration of the East African Community* op. cit., p. 21-44:28

¹⁸⁶ S. Kayunga, 'Deepening Political Integration of the EAC Countries: The Uganda Case,' in Ahmed Mohiddin (ed.), *Deepening Regional Integration of the East African Community* op. cit., p. 153

¹⁸⁷ East African Community, *Treaty Establishing the East African Community* op.cit. Preamble

Treaty, The objectives of the community shall be to develop policies and programmes aimed at widening and deepening cooperation among partner states in political, economic, social and cultural fields, research and technology, defence, security and legal and judicial affairs, for their mutual benefit¹⁸⁸.

The Treaty commits states to six fundamental principles, including: good governance, democracy, respect for the rule of law, accountability and transparency; social justice and equal opportunities; gender equality; and the “recognition, promotion and protection of human and peoples’ rights in accordance with the provisions of the African Charter on Human and Peoples’ Rights”¹⁸⁹. Article 7 of the Treaty which highlights principles of the community commits partner states to undertake to abide by the principles of good governance, including adherence to the principles of democracy, the rule of law, social justice and the maintenance of universally accepted standards of human rights¹⁹⁰.

3.3.1 Achievements

Since the establishment of the EAC, it has recorded some achievements. The first is success in establishing the organs of the community as stated in the EAC Treaty, establishment of a customs union, strengthening of the East African identity, harmonisation of monetary and fiscal policies, improvement of transport and communications systems, the launching of the Lake Victoria Commission and deepening of cooperation in different sectors . The East African Court of Justice (EACJ) and the East African Legislative Assembly (EALA) were formally launched in 2001. EALA has

¹⁸⁸ Ibid. pp. 12-13

¹⁸⁹ Ibid. Article 6 (d)

¹⁹⁰ East African Community, *Treaty Establishing the East African Community* op. Cit. Art. 7

enacted several acts¹⁹¹. A second achievement has been the establishment of the EAC Customs Union Protocol signed in March 2004 and entered into force in 2005. It eliminated all tariffs on goods from Kenya and Tanzania to Kenya. Kenya goods will continue to face tariffs on its goods until 2010. The Protocol will increase intra-trade among the partner states, increased competition that will increase consumer's choice, reduction of costs, and attraction of foreign direct investments¹⁹².

Thirdly, the EAC has taken steps towards harmonisation of monetary and fiscal policies including: convertibility of partner states currencies, harmonisation of banking rules and regulations, regular sharing of information on budgets, and reading of budget statements on the same day. In capital markets, the Establishment of Capital Markets Development Authority that oversees development of the capital markets in the EAC aims to develop and EAC Capital Markets including managing cross-listing of stocks¹⁹³.

The fourth achievement is a Tripartite Agreement on Road Transport ratified by partner states to facilitate interstate road transport through reduced documentation for crews and vehicles at border crossing, harmonised requirements for operation, licensing and customs and immigration regulations, among others. A Sectoral Council on Transport, Communications and Meteorology was set up to fast-track decisions¹⁹⁴. The sixth achievement is the launching of the Lake Victoria Commission to preserve Lake Victoria through implementation of the Lake Victoria Environmental Management Program. This is ensuring the sustainable use of Lake Victoria. The seventh is foreign

¹⁹¹ The Community Emblem Act, The EAC Legislative Assembly Power and Privileges Acts; the Acts of the Community; The EAC Customs Management Act; The EAC Interpretation Act; and the Appropriations Acts for 2002 to 2005. Diodorus Buberwa Kamala, MP, 'The Achievements and Challenges of the New East African Community Co-operation' in *Research Memorandum* No. 58. June (2006) p. 9

¹⁹² K. Buberwa, MP, 'The Achievements and Challenges of the New East African Community Co-operation' *op.cit.* p. 9

¹⁹³ *Ibid.* p. 10

¹⁹⁴ *Ibid.* p. 11

policy coordination through a Memorandum of Understanding on Foreign Policy Coordination. This will form the basis for strategies and modalities of bringing about common foreign policy for East Africa¹⁹⁵.

A joint tourism promotion initiative is the eighth achievement. The EC signed protocols on: Environment and Natural Resources Management and Standards for the Classification of Hotels, Restaurants and other tourist facilities. The two protocols will help in promoting East Africa as a single tourist destination and will result in more tourists and growth of the tourism industry. Last but not least, from 2005, the EAC has been exploring options for fast-tracking the process towards achieving a political federation, and set up a committee to work on it in 2004¹⁹⁶. Consultations were held in Tanzania, Kenya and Uganda to provide an opportunity for citizens to input in to the process¹⁹⁷.

The ninth achievement is that the EAC already has institutions to deal with and guide various aspects of East African integration. These include: the summit, council of ministers, the secretariat, coordinating committee, sectoral committees, court of justice and legislative assembly. Autonomous Institutions of the Community are the East African Development Bank, Lake Victoria Fisheries Organisation, Inter-University Council for East Africa, East African Civil Aviation Academy and the East African School of Librarianship¹⁹⁸.

¹⁹⁵ Ibid. p. 12

¹⁹⁶ EAC, *Report of the Committee on Fast Tracking East African Federation*, op.cit.

¹⁹⁷ K. Buberwa, MP, 'The Achievements and Challenges of the New East African Community Co-operation' op. cit. pp. 13

¹⁹⁸ UNECA *Assessing Regional Integration in Africa* (United Nations Economic Commission for Africa, Addis Ababa, 2004) p. 24

3.3.2 Challenges

The same challenges that bedevilled the EAC I continue to rear their heads in the new EAC. The first challenge is consensual decision-making process. As Ng'eno et al point out; the EAC still adopts a consensual decision-making process. They hasten to note that consensus runs the risk of decisional paralysis. They argue that consensus to do something might be part of a definite tendency towards comity in relationships among the leaders-the sense of not wanting to confront a leader who feels strongly about a particular issue. The result is likely to be that no decision is made. The Treaty comes out strongly on the role of civil society and private sector. However, it does not state clearly how the benefits and costs of benefits of integration will be shared and address equity issues. The current EAC, at least on paper, is meant to be people-centred and market driven cooperation. However, it still leaves a lot of power in the hands of the political leaders (heads of state).¹⁹⁹ As the Wako Committee noted, the EAC Secretariat has been a forum where technocrats from partner states negotiate to harmonise their national positions/interests instead of adapting national positions to regional standards or requirements²⁰⁰.

Secondly, transition to democracy varies widely amongst members. Whilst President Museveni is a fervent supporter of an East African Federation, to some he could be one of its biggest obstacle. His changing the constitution to run for a third term did not go down well in some partner states. Connected to the above point is the issue of the internal political processes within the Partner States. Despite their shared history the Partner States not only have constitutional arrangements that are unique to each of them,

¹⁹⁹ See Ibid. p. 103-105

²⁰⁰ EAC, *Report of the Committee on Fast Tracking East African Federation* op.cit. para. 198

but also, have in recent years, been engaged in a review of their constitutions based on their separate internal concerns.

Lack of an enforcement machinery and sanction mechanism is the third challenge. As a result national interest prevails because there are no penalties for lack of implementation, and an EAC Secretariat with no legal executive authority for enforcement, EAC programmes remain unimplemented. Additional factors include: apparent lack of commitment to implement decisions; failure to communicate agreed decisions to bureaucrats responsible for implementation in time or none at all; resistance by high level bureaucrats in government institutions; delays in ratification of protocols; frequent backtracking on decisions taken due to a divided loyalty between state and regional pressures; and lack of implementation strategies and plans with implicit timeframes for implementation of decisions taken²⁰¹.

Fourthly, there is the challenge of financing. As the Wako Committee observed, “on many occasions the Partner States have not remitted in time even what they have approved as their contributions²⁰². There has been a reliance on donor funding for its activities. Thus, serious thinking must be done on how to finance the process leading to the federation and the federation itself.

Ceding Sovereignty is the sixth challenge. One of the fundamental principles of EAC is sovereign equality²⁰³. The issue of sovereignty has generally handicapped the integration processes in Africa²⁰⁴. According to the Wako Committee, the fear is that as a

²⁰¹ EAC, *Report of the Committee on Fast Tracking East African Federation* op.cit. para. 197

²⁰² Ibid. para. 195.

²⁰³ East African Community, *Treaty Establishing the East African* op.cit Article 6(a)

²⁰⁴ P. Kasaija Apuuli, 'The Challenges Facing the Establishment of the African Union: Reflections on the Organization of African Unity (OAU) and the Constitutive Act 2001 of the AU,' in *African Historians and Globalization*, Issiaka Mande & Blandine Stefanson (eds.), (Paris: Karthala, 2005) p. 113.

Federation, the nation states would cease to have any meaningful powers and would be relegated to mere provinces within the Federation²⁰⁵. The fear is manifested in a number of ways including; loss of power at political level, loss of decision making, and loss of flexibility in exercising powers at the national level²⁰⁶.

As Kayunga has observed, one factor that has often undermined the process of regional integration has been nationalism.²⁰⁷ The two processes are antagonistic to one another on three counts. First, whilst nationalism aims at creating boundaries with each nation occupying a native home or territory, regional integration seeks to both undermine the territorial basis of a nation and facilitate the free movement of people. Secondly, whilst nationalism seeks to enhance cultural and other forms of identity of particularism, integration is a universalizing process, seeking to create new forms of identity or forms of citizenship not based on the nation state. Thirdly, whilst nationalism seeks to enhance the sovereignty of the nation state, regionalism seeks to undermine it²⁰⁸.

Closely linked to lack of ceding sovereignty is the seventh challenge of non-harmonisation of positions before international fora. Partner states have in a number of cases formulated and presented positions, which are at variance with each others' positions, for example the issues of Kenya's position of placing the lion species on the endangered list while Tanzania encourages game hunting. There is also concern related to the use of the Nile waters and conservation of Lake Victoria and negotiations under the

²⁰⁵ EAC, *Report of the Committee on Fast Tracking East African Federation op. cit.*, para. 233.

²⁰⁶ *Ibid.* Para. 234

²⁰⁷ S. Kayunga, 'Deepening Political Integration of the EAC Countries: The Uganda Case,' *op.cit.* p.210.

²⁰⁸ *Ibid.* p. 211

European Union-Economic Partnership Agreements (EU-EPAs), where national positions conflict²⁰⁹.

The eighth challenge is the issue of multiple memberships to different regional integration groups. Whilst Uganda and Kenya belong to the Common Market of East and Southern Africa (COMESA), Tanzania is not a member²¹⁰. Uganda and Kenya are not members of the Southern Africa Development Community (SADC) while Tanzania is a member. According to the Wako Committee, "...Tanzania is now carrying out negotiations in different groupings from that of the other two Partner States"²¹¹. It adds, "there is likelihood that the Partner States may commit themselves differently with the possibility of creating tension within the Customs Union and other economic and political commitments binding the EAC Partner States"²¹². The issue of creating tension within the Customs Union is very germane for Tanzania. The SADC countries recently resolved to establish their customs union by 2010²¹³.

The COMESA countries will establish theirs in 2008. The EAC established its own Customs Union in 2004, which prohibits member states from acceding or joining Unions with conflicting objectives. As a member of SADC, Tanzania will also be covered under the SADC Customs Union. This issue was presented to the EALA, which in turn gave the governments of the EAC up to December 2006 to come out with a resolution²¹⁴. The EALA suggested that if member states of the EAC want to join other

²⁰⁹ EAC, *Report of the Committee on Fast Tracking East African Federation* op.cit. para. 249

²¹⁰ Tanzania pulled out of COMESA in 2000.

²¹¹ EAC, *Report of the Committee on Fast Tracking East African Federation* op.cit para. 257

²¹² Ibid. para. 257

²¹³ See *The East African*, 6-12 November 2006, p. 2.

²¹⁴ Yona Kanyomozi and Odida, presentations at the Development Network of Indigenous Voluntary Associations (DENIVA) Public Dialogue on Fast Tracking East African Federation Dialogue, Hotel Equatoria Kampala, 24th November (2006)

customs unions, they should do it as EAC and not individual member states. The governments are yet to come out with their decision on the matter²¹⁵.

3.4 Conclusion

From the above, it is clear that some of reasons for the failure of the EAC I still plague the new EAC. The cited causes for the collapse of the EAC I are poor institutional ethos; ideology, regional conflict, and systemic external penetration; insufficient financial resources; focus on national interest at the expense of regional interest; lack of strong private sector and civil society participation and disagreements over the benefits of jointly-owned common services. Given that EAC institutions existed due to the deliberate will of member states, they were operated to satisfy their national interests and were instruments for achieving member states' objectives. When it was perceived that member states' national interests were not being met, quarrels arose among member states.

A state's pursuit of its own national interest as a priority is often at the detriment of integration. Economic and political integration in the new EAC is an ambitious aspiration that calls for various obstacles that have hindered integration, to be addressed namely: lack of political will and focus on narrow national interest, economic and social differences and multiple memberships to other regions. Full integration will not be achieved in a significant way until the members entrench the Treaty Establishing the EAC by setting up an executive authority at the EAC level and cede sovereignty to it. This will guard it against amendments to align the Treaty with national laws and interests of member states.

To achieve that, it has been argued, and justifiably so, that starting with a political federation in the EAC would minimise the current divided loyalty –between national and

regional interests-when negotiating and implementing economic integration process. Experiences from negotiations of the EAC Custom Union, revealed a nationalist posturing by the partner states, with all the concerned parties looking at issues through a national rather than the collective common interest²¹⁶. For the regional integration in the EAC to be successful, as noted in the Treaty, it must incorporate full ownership and participation of the people, especially through their institutions of choice. Civil society organisations have a role in order to ensure that the previous mistakes of the community are not repeated. The active participation of civil society in the activities of the community will provide the necessary impetus in the development of the community²¹⁷.

From the foregoing, it is clear that regional integration in the new EAC has been held hostage largely by national interest. To be successful, renewed efforts at regional integration in the East African Community must begin with recognition of an important fact: integration efforts in Africa have been plagued by failure due to states' reluctance failure to cede partial sovereignty which is a prerequisite for the success of supranational organisations such as the East African Community and develop strategies to manage national interest in a way that will not hamper integration.

²¹⁶ EAC, *Report of the Committee on Fast Tracking East African Federation* op.cit. para. 300

²¹⁷ East African Community, *Treaty Establishing the East African Community* op.cit. Article 127(3) and 4

CHAPTER FOUR

Kenya's National Interest and Its Implications for Regional Integration in the EAC

4.0 Introduction

This study began by noting how national interest often couched as sovereignty hinders and at times undermines regional integration efforts. The previous chapters expounded the main objective of this study as an analysis of the role of national interest in regional integration. The paper focuses on the case of Kenya in the East African Community (EAC) between 2000 and 2007. The first chapter provides an insight into the structure of the thesis including the introduction, statement of the problem, objectives, hypotheses, justification, literature review, theoretical framework, research methodology and chapter outline.

Chapter two reviews theories of regional integration and assesses their application and success in the African context. The third chapter reviews efforts towards regional integration in East Africa. It also focuses on the reasons why the old EAC failed and assesses whether national interest was a cause of its collapse. This chapter will examine how Kenya's national interest impacts on renewed efforts at regional integration in the EAC.

4.1 National Interest and Regional Integration in the new EAC

The term national interest of a state, usually as defined by its government has two broad usages. First it may be used by politicians in seeking support for a particular course of action, especially in foreign policy. Given the widespread attachment to the nation as a social and political organization, national interest is a powerful device for invoking support. The term is used by politicians to seek support for domestic policy objectives,

but here it is less persuasive given the normal extent of differences on domestic policy and hence employed less. In foreign policy in contrast, the term invokes an image of the nation, or the nation-state, defending its interests within the anarchic international system where dangers abound and the interests of the nation are always at risk²¹⁸.

Secondly, it may be used as a tool for analysing foreign policy, particularly by political realists, such as Hans Morgenthau. Here national interest is used as a sort of foreign policy version of the term 'public interest'—indicating what is best for the nation in its relations with other states. This use of the term emphasizes not merely the threat to the nation from the international anarchy, but also the external constraints on the freedom of manoeuvre of the state from treaties, the interests and power of other states, and other factors beyond the control of the nation such as geographical location and dependence on foreign trade. This analytical usage of the term places much emphasis on the role of the state as the embodiment of the nation's interest. The realists' use of the term national interest in evaluating foreign policy has focused on national security as the core of national interest. 'Interest of state' and 'national security interest' are closely allied terms²¹⁹.

Some writers have argued that the best interests are, nevertheless, objectively determined by the situation of the state within the international system and can be deduced from a study of history and the success/failure of policies. Other writers concede that national interest is subjectively interpreted by the government of the day. In this

²¹⁸ J. Donnelly, *Realism and International Relations* (Cambridge: Cambridge University Press, 2000) p. 70

²¹⁹ J. Goldstein, *International Relations* (USA: Priscilla McGeehan, 2001) p. 14

version, national interest is similar to the politician's rhetorical usage of the term—the national interest is merely what the politician says the national interest is²²⁰.

According to Grieco, for realists, international anarchy fosters competition and conflict among states and inhibits their willingness to cooperate even when they share common interests. He argues that international institutions are unable to mitigate anarchy's constraining effects on inter-state cooperation. Realism presents a pessimistic analysis of the prospects for international cooperation and of the capabilities of international institutions²²¹.

Kagoro posits that the EAC is held together by several things: common security concerns; trade relations of dependence (Uganda needs access to Kenya's port and Kenya needs to market its manufactured goods and labour in the East African market); socio-cultural linkages such as media (East Africa Television and newspapers such as The East African); Kiswahili language; and inter-linkages authored by a shared colonial history; involuntary integration due to pressures from globalisation forces and a history of past integration (old EAC)²²². Kamanga asserts that the EAC is held together by the existence of a Treaty because members are duty-bound to the community and also the interests within the member states-political and business class and citizens living in border areas

²²⁰ K. J. Holsti, *International Politics: A Framework for Analysis* 7th ed. (London: Prentice-Hall International, 1995) p. 41

²²¹ J. Grieco, 'Anarchy and the Limits of Cooperation', *op.cit* pp. 485-507: 485

²²² B. Kagoro is the Pan African Policy Manager in ActionAid International. This comment is based on an interview conducted by the researcher on 23 July 2008, Nairobi

²²³. Kaahwa concurs by noting that the EAC is held together by the political goodwill and commitment of the partner states as contracting parties to the EAC Treaty²²⁴.

Wanyoto posits that the prime factor that holds the EAC together is the existence of survival instincts influenced by global dynamics beyond the national push 'integrate or die'. However, she maintains that national benefits are the main impetus of integration in East Africa because members hold on to their sovereignty to avoid competition at the expense of economies of scale. They ignore the bigger picture-benefits to the region but pay attention to individual nations' needs²²⁵.

Uganda, Rwanda and Burundi need a pathway to the sea, removal of border stops. Rwanda needs a fibre optic cable. All countries need infrastructure and raw materials²²⁶. Tanzania interested in developing its services sector-market its tourism destinations through Kenya which has a developed tourism sector but hesitant to fully integrate fearing; instability from other members; labour take over through domination by foreign capital and labour from Kenya because its capital class is small; and rise in crime rates²²⁷.

From the above, it is evident that that regional integration in the EAC is driven by external forces such as globalisation and internally it is largely by national interests of the members. Members have varying interests-economic, social and political. The members are cognisant of the fact that with globalisation their interests are best protected in a

²²³ K. Kamanga is a Senior Lecturer in the Faculty of Law, University of Dar es Salaam. This comment is based on an interview conducted by the researcher on phone from Kampala on 1 August 2008

²²⁴ T.K. Kaahwa is the Counsel to the East African Community, EAC Secretariat Arusha. This comment is based on an interview conducted by the researcher via email received on 5 August 2008 from Arusha Tanzania

²²⁵ L. Wanyoto Mutende is a Ugandan member of parliament in the East African Legislative Assembly. This comment is based on an interview conducted by the researcher on 21 July 2008, Nairobi

²²⁶ D. Deya is the Chief Executive Officer of the East African Law Society (EALS). This comment is based on an interview conducted by the researcher on 29 July 2008, Nairobi

²²⁷ B. Kagoro is the Pan African Policy Manager in ActionAid International. This comment is based on an interview conducted by the researcher on 23 July 2008, Nairobi

competitive regional bloc. To establish how the focus on national interest impacts regional integration, the next section will focus on the Kenya's national interest and the EAC.

4.2 Kenya's National Interest and its Impact on Regional Integration in the EAC: A Critical Analysis

The focus on Kenya does not presume that the other countries in the EAC-Uganda, Tanzania, Rwanda and Burundi-do not prioritise their national interests over regional interests. As pointed out in the previous section, they all harbour national interests. This paper does not focus on the other members of the EAC simply because the analysis of the impact of their interests on regional integration in the EAC is beyond the scope of this study.

In examining, the impact of Kenya's national interest on regional integration in the EAC, four thematic areas will be critically analysed in this section. These include: adherence to EAC Customs Union Protocol, election of members to the East African Legislative Council (EALA); respecting the independence and autonomy of the East African Court of Justice (EACJ); and multiple membership to other regional economic communities. The chapter will conclude by looking at ways in which Kenya's national interest can be managed in order to enhance regional integration in the EAC.

4.2.1 Adherence to the EAC Customs Union

Kenya ratified the EAC Customs Union (EAC CU) that came into force in 2005. However, its full implementation by Kenya has been hampered by wrangles largely brought about by the imposition or existence of non-tariff-tariff barriers (NTBs). NTBs appear in the form of rules, regulations and laws that have a negative impact on trade.

The EAC has adopted this broad guideline to define NTBs as ‘quantitative restrictions and specific limitations that act as obstacles to trade’²²⁸. Such restrictions and limitations are embedded in laws, regulations, practices and requirements other than tariffs and include non-tariff charges, government participation in trade, restrictive trade practices and policies, customs and administration procedures and practices, technical barriers to trade, sanitary and phyto sanitary measures and un-harmonised working hours²²⁹.

NTBs are often justified on four main reasons: to safeguard health, safety, and security of human beings, animals and plants, and against environmental pollution; to protect home industries and consumers; to safeguard national security and to safeguard against revenue loss²³⁰. In broad terms they safeguard national interests as interpreted by a particular state. Kenya imposes NTBs on goods from EAC member states in spite of signing the EAC Customs Union, as discussed below.

Kenya introduced import, export and other trade regulations that have been introduced without sufficient lead time to enable a proper understanding and compliance by affected businesspeople²³¹. Import and export inspection, and certification procedures involve many government bodies which do not collaborate, resulting to duplication of

²²⁸ A. Klug et al, *Theories of International Trade* (London: Routledge, 2006) p. 10

²²⁹ N. S. Ihiga, ‘Proposed Mechanism for Elimination of Non-Tariff Barriers in the EAC’ (East African Community and East African Business Council, 2007) p. 5

²³⁰ Ibid

²³¹ Examples of regulations that may be difficult to understand could include the Customs Reforms Modernization Programme (CRM – Simba system) introduced in Kenya from 1st July 2005, and the related requirement by Kenya Bureau of Standards for imports to be accompanied by a quality certificate issued by an internationally accredited laboratory. In end June 2005, the Pre-Shipment Inspection program which was previously contracted to international PSI companies came to an end. Consequently, Kenya Customs introduced the CRM, commonly referred to as the Simba system, whose focus is inspection of quantity and dutiable value of imports. The Kenya Bureau of Standards also introduced the Pre-Shipment Verification of Conformity to Kenyan standards program (PVoC), which focuses on quality inspection and conformity of imports to Kenyan standards. Kenyan businesspeople and their Ugandan and Tanzanian counterparts strongly voiced their objections that both the CRM and PVoC were introduced without sufficient lead time to enable full compliance and uninterrupted imports. N. S. Ihiga, ‘Proposed Mechanism for Elimination of Non-Tariff Barriers in the EAC’ (East African Community and East African Business Council, 2007) p. 11

effort. Also, many of the inspection bodies have not established laboratories at major entry and exit points²³².

Consequently, Kenya and Uganda have been embroiled in a semen-chicks wrangle in which Kenya maintains that Ugandan firms will only export day-old chicks and chicken products to Kenya on condition that they are sold through agents in Kenya who would conduct risk assessments of the imports. On the other hand, Uganda insist that Kenya must submit a risk assessment report before an 11 year old ban on importation of beef, bull semen and other products from Kenya is lifted²³³.

Tanzania has also alleged that Kenyan authorities demand tests on its milk in Nairobi before allowing it to be sold on the market. This happens in spite of Kenya's agreement with Tanzania that once the Tanzania Bureau of Standards is satisfied with the quality, no other member-state should question the standard of a product²³⁴. Tanzania also complains that the over 60 per cent duty that Kenya has imposed on its milk exports

²³² The quality inspection bodies in Kenya include Customs, KEBS, KEPHIS, PCPB, MOA, and MOLD.

- Customs – verification of import coding, quantity and dutiable value, and control of prohibited and restricted exports
- KEBS – Kenya Bureau of Standards – undertakes sampled inspection on quality requirements
- KEPHIS – Kenya Plant Health Inspectorate – undertakes sampled inspection and certification of phytosanitary requirements
- for imports and exports
- PCPB - Pest Control Products Board - undertakes assessment of safety, quality and efficacy of pesticides and likely impact to
- crops if applied in farming.
- MOA – Ministry of Agriculture - approves and issues import permit permits for any plant imports
- MOLD – Ministry of Livestock Development - approves and issues permits for any animal imports

N. S. Ihiga, 'Proposed Mechanism for Elimination of Non-Tariff Barriers in the EAC' op.cit p. 30

²³³ C. Kazooba and Benon Herbert Oluka, 'East Africa: Uganda And Kenya Fail to Resolve Chicks And Semen Trade Tiff' *The East African* (Nairobi) 9 August 2008 pp. 1-2 also available online at <http://allafrica.com/stories/200808190303.html>

²³⁴ F. Mwera, 'Tanzania: Kenya Duty on Dar Milk Upsets Government' *The Citizen* (Dar es Salaam) 3 August 2008 p. 2 also available online at <http://allafrica.com/stories/200808040035.html>

is in contradiction of the regional trade agreement (Customs Union Protocol)²³⁵. According to the EAC Customs Union Protocol, milk exports to Kenya from Tanzania are duty-free²³⁶. Moreover, the Kenya Dairy Board has decreased the quantity of milk to be exported to the country. They have allowed Tanzania to export about a quarter of what they agreed. An instance is marked when Tanzania exported 10,000 instead of the agreed 30,000 litres of milk.²³⁷ Tanzania criticizes the too many institutions involved in authorizing dairy imports. They complain that they have to deal with not less than four branches of officialdom – the Kenya Dairy Board, the Kenya Bureau of standards, the Veterinary Department and the Kenya Revenue Authority²³⁸.

Offloading of cargo at the port of Mombasa is a nightmare for Ugandan importers, and one has to spend a minimum of two weeks, or a normal period of one month to clear goods from the port. This is due to clogging of the port as a result of insufficient and slow operating cranes to offload delivery vessels, and also because Kenya Railways grossly lack wagons to transport goods out of the port to destinations like Uganda²³⁹.

At the Mombasa port, goods attract demurrage charges after a grace period of only 15 days from the time they are entered into a customs warehouse. However it takes more than 10 days for exporter's and importer's bank to conclude correspondence on a letter of credit, 10 more days to clear the goods at the docks, 10 more days to complete process of declaring the cargo, pay duty and applicable surcharges before goods can be

²³⁵ 'East Africa: Country Contradicts EAC Trade Agreement' Arusha Times 9 August 2008 p. 3 also available online at <http://allafrica.com/stories/200808110365.html>

²³⁶ See EAC Trade Agreement available online at <http://www.eac/agreements.html>

²³⁷ Ibid

²³⁸ F. Mwera, 'Tanzania: Kenya Duty on Dar Milk Upsets Government' *The Citizen* (Dar es Salaam) 3 August 2008 p. 2 also available online at <http://allafrica.com/stories/200808040035.html>

²³⁹ N. S. Ihiga, 'Proposed Mechanism for Elimination of Non-Tariff Barriers in the op.cit p. 58

released. This means goods have to stay within the port area for a minimum of 30 days. The 15 days grace period is therefore unrealistic²⁴⁰.

Poor infrastructure has the effect of exacerbating the impact of customs and related delays and costs. The state of roads and the congestion of ports all contribute to extending lead times for the delivery of goods. This addition of delay upon delay, cost upon cost makes supply chains more fragile and brittle. It makes businesses less able to be responsive to their customers. It makes planning horizons longer and increases investment risk dramatically. In a world where speed is increasingly being used as a competitive advantage, African businesses are becoming even less competitive as further regulations, processing steps and costs are compounded with congested ports, irregular power supply and decaying transport infrastructure²⁴¹.

Police officers stop commercial vehicles at various road blocks while officially, they are only supposed to stop vehicles based on more than 52% proof that goods being transported are suspicious (e.g. that vehicle exceeds allowed axle load, goods are smuggled, vehicle is carrying drugs or other dangerous products like arms, documentation does not conform to goods being transported,etc)²⁴².

A survey commissioned by the East African Business Council (EABC) found that the majority of businesses in the East African region think non-tariff barriers are the main impediment to the realisation of the goals of the EAC Customs Union (CU)²⁴³. This was later confirmed when the EAC Director of Customs Kenneth Bagamugunda affirmed that

²⁴⁰ Ibid p. 30

²⁴¹ A. McTiernan, *Customs and Business in Africa: A Better Way Forward Together*, London: , Business Action For Improving Customs Administration in Africa (BAFICAA), July/August 2006 p.27

²⁴² N. S. Ihiga, 'Proposed Mechanism for Elimination of Non-Tariff Barriers in the EAC' op.cit p. 28

²⁴³ East African Business Council (EABC), 'A Study on Non-Tariff Barriers (NTBs).and Development of a Business Climate Index in the East African Region' EABC 24 March 2005 p. 13

NTBs increase the cost of doing business, thus rendering the region uncompetitive. Their implementation also defeats EAC's integration objective of developing a competitive private sector both in the region and globally²⁴⁴.

An interview with Walter Kamau and Dickson Poloji of the Kenya Association of Manufacturers revealed that despite signing the Customs Union Protocol, Kenya has NTBs that hamper free movement of goods. The biggest NTBs in Kenya include: police road blocks, sanitary and phytosanitary standards; and poor infrastructure²⁴⁵. The Permanent Secretary at the ministry of East African Cooperation, D. Nalo, notes that police road blocks remain a huge hindrance to regional trade. He noted that trucks transporting goods from the Mombasa port to Uganda, Rwanda and Burundi face about 47 police road blocks between Mombasa and the border town of Malaba²⁴⁶.

This is despite the fact that Kenya is signatory to the EAC Treaty and the EAC customs union and thus bound to ensuring that it meets its obligations by ensuring high standards of infrastructure and adherence to the customs union rules. As Brownlie notes, the law of treaties is closely bound with the principle of good faith, if indeed not based on it. This principle governs treaties from the time of their formation to the time of their extinction²⁴⁷. Contracting parties are always assumed to be acting honestly and in good faith. Martin defines good faith as "an expectation of each party to a contract that the other will honestly and fairly perform his duties under the contract in a manner that is

²⁴⁴ L. O. Omolo, 'Inter-Regional Trade Volumes among EAC Member States yet to Pick' *African press* 26 August 2008

²⁴⁵ W. Kamau is the Executive Officer, Trade Policy and Dickson Poloji is the Executive Officer, Policy and Research both in the Kenya Association of Manufacturers. This comment is based on an interview conducted by the researcher on 7 August 2008, Nairobi

²⁴⁶ D. Nalo is the Permanent Secretary in the Ministry of East African Cooperation Kenya. This comment is based on an interview conducted by the researcher on 4 August 2008, Nairobi

²⁴⁷ I. Brownlie, *International Law and the Use of Force* (Great Britain: Oxford University press, 1963) p.

acceptable in the trade community”²⁴⁸. He goes on to give it international authority as “an international doctrine that requires parties to an international transaction to act reasonably, as they would expect the other party to act”²⁴⁹.

Kenya’s failure to comply with the EAC customs union provisions has contributed largely trade diversion. Instead of sourcing materials from the EAC countries increasing intra-EAC trade as envisaged by the customs union, businesses in the EAC region opt to import most of their requirements from the rest of the world. For instance in 2007, Tanzania’s imports from the non-EAC world account for 75 per cent of its total imports, while the figure for Burundi is 43 per cent. Imports from EAC countries by Kenyan and Tanzanian businesses account for only six and five per cent of their total imports respectively. Europe is the chief source of imports to the EAC countries, taking between seven and 14 per cent of the total. In the survey, EABC calls for speedy implementation of the monitoring mechanism to fast-track elimination of NTBs in the EAC²⁵⁰.

Although Kenya might be catering for its national interests as noted earlier, the narrow focus on national interest only hampers the attainment of the national interest of the other countries in the community and the overall goal of regional integration in the EAC.

4.2.2 Election of Members to the East African Legislative Assembly (EALA)

The East African Legislative Assembly (EALA) is the independent legislative arm of the Community. In addition to providing a democratic forum for debate, it also serves a

²⁴⁸ D. Martin, *Textbook in International Law* 4th ed. (Oxford: Oxford University Press, 2005) p. 333

²⁴⁹ *Ibid.*, p. 352

²⁵⁰ East African Business Council (EABC), ‘A Study on Non-Tariff Barriers (NTBs) and Development of a Business Climate Index in the East African Region’ op. cit., p. 13

watchdog function²⁵¹. Article 50 (1) of the EAC Treaty provides that: “The National Assembly of each Partner State shall elect, not from among its members, nine members of the Assembly, who shall represent as much as it is feasible, the various political parties represented in the National Assembly, shades of opinion, gender and other special interest groups in that Partner State, in accordance with such procedure as the National Assembly of each Partner State may determine”²⁵².

When the first Assembly was due to be constituted in 2001, the National Assembly of Kenya, “in exercise of the powers conferred by Article 50(1) of the Treaty” made The Treaty for the Establishment of the East African Community (Election of Members of the Assembly) Rules 2001” (the election rules). In 2001, the Kenya National Assembly, pursuant to Article 50 of the Treaty, determined its own procedure for election of the nine members of the Assembly in form of the election rules, which embody the democratic principle of proportional representation. The first nine members of the Assembly, whose term expired on 29th November 2006 were elected under those rules²⁵³.

However, in 2006, Kenya failed to follow the EAC Treaty Provisions for electing members of the regional Legislative Assembly. This was followed by political jostling when Kenyan Vice President Moody Awori and Health Minister Charity Ngilu argued as to who between them had the right to lead the process of picking the nine Kenya representatives to the EALA. Ngilu argued that, as the chairperson of the ruling National Rainbow Coalition (NARC) which had put the current (Mwai Kibaki) government in power, she had the right to preside over the selection process. But Awori insisted that, as

²⁵¹ A. Rok (ed.), *The Revival of the East African Community* (South Africa: Institute of Global Dialogue, 2005) p. 9

²⁵² EAC, *The EAC Treaty* (Arusha: EAC, 1999)

²⁵³ Mojjo. M. ole Keiwua, Joseph. N. Mulenga, Augustino. S. I. Ramadhani, Kasanga Mulwa, Harold Nsekela, *East African Court of Justice, Ruling on case Reference No. 1 of 2006*, March 30, 2007 p. 3

the leader of government business and the chairman of the House Business Committee which sets the agenda in parliament, he was better placed to preside over the process. The government's decision to have Awori lead the naming triumphed. However, another problem arose when the government dropped some of the names forwarded by some of its constituent parties and went ahead to pick other representatives on behalf of the parties under the pretext that the former ruling party, KANU, had authorized the House Business Committee to come up with the names for parliamentary approval²⁵⁴.

Five of the nine names; Catherine Kimura, Clarkson Otieno Karan, Augustine Chemonges Lotodo, Gervase Akhaabi and Safina Kwekwe Tsungu - were nominated by the government. The opposition, KANU, picked Abdirahman Haji, Sarah Godana and Christopher Nakulei, as Ford-People went for Reuben Oyondi. Four names, Fidelis Nguli, Yvonne Khamati, Ochieng Mbeo and Rose Waruhiu, forwarded by some constituent parties of NARC were rejected. The aggrieved constituent parties, Democratic Party, Liberal Democratic Party, National Party of Kenya and Ford-Kenya, protested and subsequently filed a case in the EACJ challenging the nominations. They argued that the nominations went against the principle of the EAC treaty that provides for direct and representative democracy because the names forwarded by the Clerk of the Kenyan National Assembly were not those proposed by the parties concerned²⁵⁵.

This matter was forwarded to the East African Court of Justice (EACJ) by the aggrieved political parties, Liberal Democratic Party and Ford Kenya. The EACJ ruled that that the National Assembly of Kenya did not undertake or carry out an election

²⁵⁴ Ibid. p. 11

²⁵⁵ Ibid.

within the meaning of Article 50 of the Treaty²⁵⁶. Although implementing the provisions for electing members of the EAC was a problem to all EAC member states and despite the flexibility of the EAC Treaty allowing members to develop their own procedure of electing members to EALA, the EACJ ruled that Kenya did not follow the basic outlined principles. As the EACJ judges noted in their ruling, the basic principle at international law, to the effect that a state party to a treaty cannot justify failure to perform its treaty obligation by reason of its internal inhibitions. It cannot be lawful for a state that with others voluntarily enters into a treaty by which rights and obligations are vested, not only on the state parties but also on their people, to plead that it is unable to perform its obligation because its laws do not permit it to do so²⁵⁷.

The judges further noted the lack of uniformity in the application of any Article of the Treaty is a matter for concern as it is bound to weaken the effectiveness of the Community law and in turn undermine the achievement of the objectives of the Community. Under Article 126 of the Treaty the Partner States commit themselves to take necessary steps to inter alia “harmonise all their national laws appertaining to the Community”. They noted that it demonstrated amply the urgent need for such harmonization²⁵⁸.

The case caused a delay in the inauguration of the Parliament for 7 months although other members of EAC had elected their representatives as per the EAC Treaty. In an interview, the Chief Executive Officer of the East African Law Society (EALS), Don Deya posits that these wrangles caused a delay in the swearing in of EALA MPs

²⁵⁶ Moijo. M . ole Keiwua, Joseph. N. Mulenga, Augustino. S . I . Ramadhani, Kasanga Mulwa, Harold Nsekela, *op.cit* p. 43

²⁵⁷ *Ibid.* p.41

²⁵⁸ *Ibid.* p.43

thus slowing important debate on integration²⁵⁹. Wilbert T.K. Kaahwa, Counsel to the EAC, notes that problems associated with electing EALA Members affected all the EAC member states and harmonisation of electoral procedures in the region is imperative²⁶⁰. In addition, Hon Lydia Wanyoto Mutende, the Ugandan MP in EALA observed that Kenya failed to honour the minimum requirements required in election of MPs²⁶¹. Getrude Mongella, the President of the Pan African Parliament and a former member of Parliament of the old EAC argues that Kenya's behaviour casts doubts on its commitment to regional integration²⁶².

This example demonstrate how national interest interest can be defined by a few individuals in power. As Kinfé notes, equally adverse to the healthy development of society and state has been lack of flexibility and open-mindedness on the part of the bureaucrats who instead of serving as catalysts of change have tended to impede it²⁶³. From the above, it is clear that Kenya undermined regional institutions to advance the interests of a few people.

²⁵⁹ D. Deya is the Chief Executive Officer of the East African Law Society (EALS). This comment is based on an interview conducted by the researcher on 29 July 2008, Nairobi

²⁶⁰ W. T.K. Kaahwa is the Counsel to the East African Community, EAC Secretariat Arusha. This comment is based on an interview conducted by the researcher via email received on 5 August 2008 from Arusha Tanzania

²⁶¹ L. Wanyoto Mutende is a Ugandan member of parliament in the East African Legislative Assembly. This comment is based on an interview conducted by the researcher on 21 July 2008, Nairobi

²⁶² G. Mongella is the President in the Pan African Parliament, a member of parliament in Tanzania and a former member of the old EAC Assembly (1975-77). This comment is based on an interview conducted by the researcher on 22 July 2008, Nairobi

²⁶³ K. Abraham, *The African Quest-The Transition from the OAU to AU and NEPAD Imperatives: A Political and Economic History of Modern Africa and the Drive for the Africa Renaissance*, Addis Ababa: Ethiopia International Institute for Peace and Development, 2003) p. 240

4.2.3 Respecting the Independence and Autonomy of the East Africa Court of Justice (EACJ)

As discussed in the previous section, Kenya was accused of not following the EAC Treaty provisions and its own parliamentary rules on the election of members to the EALA that led to a case in the EACJ. The ruling fell short of saying whether Kenya should conduct a fresh election for its EALA members. However, in retaliation, Kenya spearheaded the move to procure the amendment of the East African Community Treaty, to ensure that security of tenure of judges of the EACJ is removed. This decision meant that the judges will be in office only at the mercy of their respective presidents, which will amount to absence of security of tenure.

The East Africa Law Society reported that unsavoury words were exchanged in the public domain ridiculing and questioning the integrity, capacity and even jurisdiction of the Court. Some of these comments have been attributed to the Chairperson of the EAC Council of Ministers, Hon. John Kipsang' arap Koech, then the Minister for East African Cooperation of Kenya. This was followed by the EAC Summit of 30th November 2006 which endorsed a recommendation of the EAC Council of Ministers, pushed by Kenya, that the EACJ be reconstituted by establishing two divisions, namely a Court of First Instance and an Appellate Division and directed that "the procedure for removal of Judges from office provided in the Treaty be reviewed with a view to including all possible reasons for removal other than those provided in the Treaty"²⁶⁴.

Kagoro, the Pan-African Policy manager in ActionAid International, asserts that Kenya undermined the legitimacy of the EALA and EACJ which are regional institutions

²⁶⁴ East Africa Law Society, Press Release, "*No Integration Without Rule of Law*" Monday 4th December 2006

that depend on compliance by member states without responding to whimsical loyalties of individuals or states. Kenya disrespected the autonomy of institutions and thus undermined regional integration in the EAC²⁶⁵. While supporting this argument, David Nalo confirms that the EAC Treaty supersedes national legislation. Nevertheless, Kenya failed to comply citing national sovereignty because it could bulldoze as the big brother in the region. The court ruling was not a challenge to Kenya's sovereignty at all. Nalo, however notes that, despite the fact it was a bad precedent, the matter was also a blessing in disguise as it demonstrated the need for an appeal section for the EACJ which was created. The EACJ now has a court of first instance and court of appeal²⁶⁶. Kamanga observes that although Kenya's actions breached the sanctity of the EAC Treaty and that set a precedent that the Treaty can be changed at the whims of states, on one hand. On the other hand, they served to increase confidence in the EACJ because it withstood the pressure by making its ruling in accordance with law. He observes that changes moved by Kenya to create two tiers of the EACJ will make cases and procedures long, costly and cumbersome²⁶⁷.

Mute posits that, regional integration requires the enabling of growth of institutions. Just as Kenya respects checks and balances at national level, it should also respect the checks and balances at the regional level. Kenya demonstrated that it does not appreciate its identity and responsibility in the EAC and prefers to revert to its

²⁶⁵ B. Kagoro is the Pan African Policy Manager in ActionAid International. This comment is based on an interview conducted by the researcher on 23 July 2008, Nairobi

²⁶⁶ D. Nalo is the Permanent Secretary in the Ministry of East African Cooperation Kenya. This comment is based on an interview conducted by the researcher on 4 August 2008, Nairobi

²⁶⁷ K. Kamanga is a Senior Lecturer in the Faculty of Law, University of Dar es Salaam. This comment is based on an interview conducted by the researcher on phone from Kampala on 1 August 2008

sovereignty cocoon when decisions do not suit it²⁶⁸. As Abraham Kinfe notes, the tragedy of much of Africa is related to the way political systems have been run since independence. This has led to the institutionalisation of a pattern of behaviour among leaders that goes contrary to the notion of rule of law. Politicians almost invariably see themselves as being above the law and are ready to violate laws in order to protect their own interest or to persecute somebody challenging their position²⁶⁹.

4.2.4 Multiple Memberships to other Regional Economic Communities

Africa has 14 regional integration schemes of varying design, scope and objectives. Presently, seven of them dominate the integration landscape, namely: the Arab Maghreb Union (AMU) with five members; the Common Market for Eastern and Southern Africa (COMESA) with 20 members; the Economic Community of Central African States (ECCAS) with 10 members; the Economic Community of West African States (ECOWAS) with 15 members; the Southern African Development Community (SADC) with 14 members; the Inter-Governmental Authority on Development (IGAD) with seven members; and the Community of Sahel-Saharan States (CEN-SAD) with 18 members²⁷⁰.

²⁶⁸ L. Mute, is the former Board Member, Kituo cha Katiba and Commissioner in the Kenya National Human Rights Commission. This comment is based on an interview conducted by the researcher on 30 July 2008, Nairobi

²⁶⁹ John Saul, *New Left Review*, March 1973 p. 25

²⁷⁰ In addition, six other schemes are geographically limited or subsets of larger schemes, namely: the West African Economic and Monetary Union (UEMOA) with eight members, all also belonging to ECOWAS; the Mano River Union (MRU) with three members belonging to ECOWAS; the Central African Economic and Monetary Community (CEMAC) with six members belonging to ECCAS; the Economic Community of Great Lake Countries (CEPGL) with three countries, also belonging to ECCAS; the East African Community (EAC) with three members, two belonging to COMESA and one to SADC; the Indian Ocean Commission (IOC) with five members, four belonging to COMESA and one to SADC; and the Southern African Customs Union (SACU) with five members, all of which belong to SADC and two to COMESA. Out of 53 African countries, 27 are members of two regional integration schemes and 18 others are members of three integration schemes. The Democratic Republic of Congo (DRC) is a member of four schemes while only seven countries belong to one regional integration scheme

M. Nyirabu, 'Appraising Regional Integration in Southern Africa' op.cit. pp. 21-32: 22

The problem is however compounded in the EAC. Kamau and Poloji note that Member states of the EAC continue to join other free trade areas for political reasons which will pose challenges when they graduate to full customs unions. Harmonisation of tariffs is difficult and time consuming and hampers free movement goods and this undermines trade facilitation which is an objective of regional schemes like the EAC. Discussions on harmonisations of tariffs between SADC and EAC are yet to start. Multiple memberships will have to be addressed before the EAC Customs union becomes fully operational in 2010 and the start of the COMESA's customs union in December, 2008. They further note that the World Trade Organisation's Rules bars a country from being a member of more than one customs union²⁷¹.

Nomvetter argues that a major problem affecting integration is the duplication of economic blocs essentially created to achieve the same objectives. Nomvette elaborates on the reasons for this, stating, a possible explanation might lie in the colonial heritage of African countries and their economic independence, the formation of many intra-sub-regional groupings was based on linguistic ties and historical links or on personal relationships between the African elite, or between African leaders and leaders in metropolitan or donor countries²⁷².

Nomvette further notes that the multiplicity problem within the sub-regional arrangements weakens the integration process. It leads to costly competition, conflict, inconsistencies, duplication of efforts, fragmentation of markets and restriction in the

²⁷¹ W. Kamau and D. Poloji. Kamau Walter is the Executive Officer, Trade Policy and Dickson Poloji is the Executive Officer, Policy and Research both in the Kenya Association of Manufacturers. This comment is based on an interview conducted by the researcher on 7 August 2008, Nairobi

²⁷² B. Nomvette, 'Regional Integration in Africa: a Path Strewed With Obstacles', *The Eye on Ethiopia and the Horn of Africa*, Vol. 6, No. 39 April-May, 1997 p. 13-16

growth potential of the sib-regional arrangement. Yet attempts to rationalise the organisations in such sub-regions as ECOWAS, where there are some 34 organisations, have failed. While recognising that the diversity of economic and social needs of African countries and the complexity of international economic relations may require or justify the existence of many organisations in one sub-region, it is patent that better results would be obtained through a limited number of larger multipurpose institutions which would contribute to the establishment of a basic equilibrium among all states within the same sub-region, and provide economies of scale for quicker economic transformation²⁷³.

Uganda, Rwanda, Burundi and Kenya are members of the Common Market for East and Southern Africa (COMESA) while Tanzania is a member of the Southern Africa Development Community (SADC). In the long run, member states will have to decide which regional economic community (REC) will serve their interests best in the process of deeper integration. Once COMESA and SADC become customs unions (CUs), countries with multiple memberships will ultimately have to opt for membership of one CU only²⁷⁴.

Legal analysis reveals that the treaties and respective protocols of SADC, EAC and COMESA do not preclude members from maintaining prior trade arrangements or from entering into new ones. For example Article 37 of the EAC Treaty holds that EAC member states have to harmonize their trade relations with third countries in order to achieve a common external trade policy²⁷⁵. Paragraph 3 requires them to identify the

²⁷³ Ibid. p. 13-16

²⁷⁴ S. Kayunga, 'Deepening Political Integration of the EAC Countries: The Uganda Case,' in *Deepening Regional Integration of the East African Community*, Ahmed Mohiddin (ed.), op.cit p. 213

²⁷⁵ EAC, *The EAC Treaty* op.cit Article 37

issues arising out of their current overlapping memberships of free trade areas (FTAs) and to set up a mechanism to address these issues²⁷⁶.

Kenya's multiple memberships to the EAC customs union and the COMESA free trade area which will become a customs union from December 2008 slow progress of regional integration in the EAC. This is demonstrated by the delay in the implementation of the EAC Summit on negotiations on Economic Partnership agreements (EPAs) with the European Union. As Nalo points out, despite the fact the EAC Summit had taken a decision that negotiations on EPAs would be done jointly under the EAC, members including Kenya went ahead and agreed to a decision taken later to negotiate under COMESA²⁷⁷. That slowed down the development of joint positions in international negotiations thus undermining regional integration.

4.3 Managing Kenya's National Interest in the EAC

Tajudeen decries the narrow definition of national interest which impacts negatively on regional integration in the EAC. This is so because members are unwilling to cede national sovereignty²⁷⁸. Kibara acknowledges that national interest drives the desire for regional integration and cites the main challenge in sustaining the community as the lack of subordinating national interests to regional integration. He urges states to learn from the past and manage their national interest to the benefit of all members of the community²⁷⁹.

²⁷⁶ Ibid. para 3

²⁷⁷ D. Nalo is the Permanent Secretary in the Ministry of East African Cooperation Kenya. This comment is based on an interview conducted by the researcher on 4 August 2008, Nairobi

²⁷⁸ A. R. Tajudeen is the Deputy Director-Africa UN Millennium Campaign and the immediate former Secretary General of the Pan African Movement. This comment is based on an interview conducted by the researcher on 24 July 2008, Nairobi

²⁷⁹ G. Mongella is the President in the Pan African Parliament, a member of parliament in Tanzania and a former member of the old EAC Assembly (1975-77). This comment is based on an interview conducted by the researcher on 22 July 2008, Nairobi

Don Deya recognises Kenya's interest in economic advancement and its unwillingness to relinquish control of economic decision-making in the region²⁸⁰. A nationalist mind set affects the process of integration. Chris Maina Peters insists that what is purportedly called 'national interests; of Kenya as a nation is in fact the interests of a few individuals who think that the EAC and any form of regional integration was a danger to the capitalist (read – market economy) development in Kenya²⁸¹.

Kagoro contends that national interest can be managed to enhance regional integration in the EAC by establishing strong institutions. This implies that member states will cede some of their sovereignty to the leadership at the EAC Secretariat and regional institutions. Besides, standards for systems, practice and institutions should be developed and harmonized²⁸². Similarly, Oloka Onyango says that national interest can be managed if member states first resolve national questions/issues such as land and ethnic conflict, resources and politics. Honest dialogues on how these issues can be addressed should be undertaken with the citizens. The can all member states reassure their citizens that they will gain from integration in the long term²⁸³. Towards managing its national interest in a way that does not hinder integration in the EAC Kenya needs to take the steps suggested below:

First, there is need to ensure that all inspection bodies should operate in one office so as to undertake inspection requirements at once. Introduce scanners at all major import

²⁸⁰ D. Deya is the Chief Executive Officer of the East African Law Society (EALS). This comment is based on an interview conducted by the researcher on 29 July 2008, Nairobi

²⁸¹ C. P. Maina is a Professor at the University of Dar es Salaam. This comment is based on an interview conducted by the researcher via email received on 1 August 2008 from Geneva.

²⁸² B. Kagoro is the Pan African Policy Manager in ActionAid International. This comment is based on an interview conducted by the researcher on 23 July 2008, Nairobi

²⁸³ J. Oloka-Onyango is a senior Lecturer at the Faculty of Law, Makerere University (Uganda). This comment is based on an interview conducted by the researcher on phone from Oxford University, UK on 26 July 2008

entry and export exit points. Inspection and diagnostic laboratories need to be established at all border entry points. Identify possible areas of harmonisation amongst EAC countries, so as to facilitate harmonisation of import and export inspection procedures²⁸⁴. Harmonisation of all business registration procedures within EAC and sensitisation of registration officials to treat all East Africans equally should also be done urgently. To reduce delays during security checks, the second priority should be to ensure sufficient resources for sniffer dogs or scanners as a major long term investment at major border points and tracking gadgets for transit trucks should be allocated to keep up war on insecurity²⁸⁵.

This should go hand in hand with investment in modern equipment at the port, including cranes, which could be done as a joint investment between Kenya and affected countries, including Uganda, Rwanda, Burundi and DRC. Sufficient budgetary allocation by Kenya KPA for mechanised unloading/reloading, and possibility for a joint project between the affected countries²⁸⁶.

Secondly, Kenya should establish a minimum notice period for introduction of any new rules or changes e.g. 6 months, even with consultation in place²⁸⁷. Consolidate exit and entry points at key borders into a single joint crossing with shared system visibility and single data entry process. Establish “one-stop shops” for all government agency requirements as a precursor to a “single-window” automated process²⁸⁸. The establishment of “one-stop shops” has worked to improve large parts of the process to clear goods for import or export and so should be considered for all parts. The key to

²⁸⁴ N. S. Ihiga, ‘Proposed Mechanism for Elimination of Non-Tariff Barriers in the EAC’ op.cit p. 38

²⁸⁵ Ibid. p. 64-65

²⁸⁶ Ibid. p. 58

²⁸⁷ A. McTiernan, *Customs and Business in Africa: A Better Way Forward Together* op.cit p. 40

²⁸⁸ Ibid p. 41

improvement is for governments hold all agencies accountable for their contribution to the flow of trade while ensuring that all regulatory and preventative responsibilities are covered. All trade related processes and certifications should be available through an automated electronic system though this is exceptional even in the developed world²⁸⁹.

Kenya should eliminate NTBs by implementing Article 13 of the East African Customs Union. Article 13 of the East African Customs Union Protocol on Non-tariff Barriers, Section 1 specifies that “unless provided for or permitted by the Protocol, each of the three East African Partner States will remove, with immediate effect, all the existing non-tariff barriers to the importation into their respective territories of goods originating in the other Partner States and, thereafter, not to impose any new non-tariff barriers”. To achieve this goal, Article 13 goes further under Section 2 to provide that “the Partner States shall formulate a mechanism for identifying and monitoring the removal of non-tariff barriers”²⁹⁰.

Fourth, establish conflict resolution and the improvement if relations among people by capitalizing on cultural, educational and scientific cooperation. This, in turn, will reduce tension and assist efforts in confidence building. It will absorb political tensions and improve the environment for dialogue and dispute settlement²⁹¹.

The fifth prerequisite is leadership to champion regional integration. As Ahmed Mohiddin points out, Africa needs able leadership. Only competent, honest, visionary and committed leaders are likely to create the enabling environment within which such

²⁸⁹ A. McTiernan, *Customs and Business in Africa: A Better Way Forward Together*, op.cit p. 31

²⁹⁰ N. S. Ihiga, ‘Proposed Mechanism for Elimination of Non-Tariff Barriers in the EAC’
op.cit p. 4

²⁹¹ K. Abraham, ‘The Challenges and Prospects of Pan African Economic Integration’, *Occasional Papers*, No. 12, June/July 1999. pp. 13-26

liberalising process could take place²⁹². Such leaders should also value good governance, accountability and transparency. Africa is in need of leaders who have a sound understanding of the globalisation phenomenon and its impact on it²⁹³. Leadership is important to create awareness of the value of supra-national political organisations as a way of removing the fear of loss of sovereignty over macro-economic policies to a monetary union or a common market²⁹⁴. Good leadership will also manage the negative perception that is Kenya arrogant and dominant dating back to the old EAC. In the new EAC, Kenya needs to let less dominant countries with democratic credentials and charisma to lead regional integration in the EAC²⁹⁵.

Sixth, to ensure that Kenya does not undermine regional institutions and agreements in the EAC, Kenya should consolidate and demonstrate political and technical goodwill to implement aspirations of the EAC Treaty, so that decisions passed are respected and domesticated through timely amendments of national laws, regulations and practices. Any intended introduction of laws, regulations and practices that may have an impact on trade need to be discussed by the three partner states, and consensus reached before they are enforced. Further, Kenya and the other member states need to recognize that with the coming into force of the Treaty and the Customs Union, they have lost their sovereignty on trade issues. This recognition is important so that policy makers do not

²⁹² Ahmed A. Mohiddin, 'Africa and the Challenges of Leadership', *Africa Forum*, Vol. 3, No. 1, June 1999, p.18

²⁹³ K. Abraham, *The African Quest-The Transition from the OAU to AU and NEPAD Imperatives: A Political and Economic History of Modern Africa and the Drive for the Africa Renaissance*, op.cit p. 420

²⁹⁴ Ibid. p. 336

²⁹⁵ G. Kibara, is the Secretary of the Justice and Constitutional Affairs in the Ministry of Justice, National Cohesion and Constitutional Affairs (Kenya). This comment is based on an interview conducted by the researcher on 30 July 2008, Nairobi

make arbitrary decisions and statements that may be injurious to the ability of one partner state to trade within the region²⁹⁶.

Seventh, Kenya needs to address the issue of multiplicity of membership to different economic communities²⁹⁷. Kenya will then focus its limited human and financial resources on the EAC instead stretching them thin to memberships to multiple RECs. Most importantly, it will ensure the smooth implementation of the EAC Customs Union which will lead to more benefits in the long run.

Finally, Kenya needs to lead and support the establishment of strong institutions for integration and cede sovereignty to the leadership at the EAC Secretariat and other institutions, ensuring benefits for all: peace, security and resources²⁹⁸. A strong EAC Secretariat and institutions with executive authority will reduce focus on national interest if structured in a way that will provide for people's participation. A political federation would go a long way in achieving that. As Tajudeen argues, there will be no economic integration without political integration because economic integration will be dependent on political and legal institutions to manage complementary demands of governance. Wide involvement of citizens and business sector will move integration beyond the stage the leaders have reached²⁹⁹.

As Rose Waruhiu observes, the EAC Treaty is written in a way that puts national interests before regional interests. Decision-making power rests with national governments

²⁹⁶ N. S. Ihiga, 'Proposed Mechanism for Elimination of Non-Tariff Barriers in the EAC' op.cit p. 5

²⁹⁷ L. Wanyoto Mutende is a Ugandan member of parliament in the East African Legislative Assembly. This comment is based on an interview conducted by the researcher on 21 July 2008, Nairobi

²⁹⁸ B. Kagoro is the Pan African Policy Manager in ActionAid International. This comment is based on an interview conducted by the researcher on 23 July 2008, Nairobi

²⁹⁹ A. R. Tajudeen is the Deputy Director-Africa UN Millennium Campaign and the immediate former Secretary

General of the Pan African Movement. This comment is based on an interview conducted by the researcher on 24 July 2008, Nairobi

and not the EAC secretariat, thus decisions are made depending on national interests and not regional ones. The Treaty provision allowing for making decisions through consensus allows members to wriggle out when it does not suit their interests. The Summit enjoys absolute powers that need to be transferred to the Secretariat. This can only happen if the political Federation is fast-tracked³⁰⁰.

This will be achieved if Kenya also strengthens its national institutions. As Gichira argues, Kenya is disorganised internally at the political level. Kenya's politics is unstable thus leadership for regional integration is uncertain. Regional integration is largely pushed by the Kenyan economic sector which at times also hesitates due to vested interests. There is need to address the political issues, enact a new constitution and form a united government to lead in regional integration³⁰¹.

4.4 Conclusion

From the foregoing, it is evident that national interest impacts negatively on regional integration. It denies members the full benefits of integration by restricting trade, undermining the independence and autonomy of regional institutions as members of the EAC such as Kenya fail to comply with their rules and regulations. This in turn, undermines the spirit and letter of the EAC Treaty and the goals it seeks to achieve. Focus on narrow national interests prevents Kenya from ceding partial sovereignty to the EAC that goes hand in hand with signing of regional agreements.

As realists argue, all states pursue their national interests even in cooperating with other states. Thus, it is only through setting mechanisms and institutions that can manage

³⁰⁰ R. Waruhiu is the former Member of the East Africa Legislative Assembly (Kenya). This comment is based on an interview conducted by the researcher on 6 August 2008, Nairobi

³⁰¹ G. Kibara is the Secretary of the Justice and Constitutional Affairs in the Ministry of Justice, National Cohesion and Constitutional Affairs (Kenya). This comment is based on an interview conducted by the researcher on 30 July 2008, Nairobi

and protect states' interests in any regional integration scheme that integration can be achieved. This means ensuring that all members interests can be achieved without undermining those of others or overall regional integration goals.

Kenya is party to the EAC Treaty. It is also party to the agreements creating EAC institutions such as the EACJ and EALA and is signatory to the EAC customs union protocol. Therefore Kenya, already ceded sovereignty by signing on to all the above and is duty bound to honour its commitments to achieve its national interests by also regional interests. Kenya cannot choose to pursue regional issues that advance its national interests only and backtrack when some procedures or agreements do not favour it. Kenya must be seen to act in ways that facilitate and not hamper regional integration in the EAC. Given the negative experience of integration in the old EAC whereby Kenya was blamed for its collapse, it must do everything possible to manage that past and to ensure this time round it not seen to be dominant, arrogant and only in pursuit of its national interests only at the expense of regional integration.

This calls for Kenya to adopt a spirit of give and take and to acknowledge that it will have incur some costs in the short-term but in the end it stands to gain more from increased trade, sharing of resources, strong positions and voice in international negotiations, increased security and prosperity of all the citizens in the EAC. That acknowledgement demands leadership in Kenya that will subordinate national interests to regional interests.

CHAPTER FIVE

CONCLUSION

5.0 Introduction

The problem is that since the establishment of the new EAC, Kenya has on several occasions failed to comply with the EAC Treaty to safeguard its own national interest. Kenya has even resorted to changing the EAC Treaty provisions on the East Africa Court of Justice (EACJ) under the guise of protecting its sovereignty as demonstrated by squabbles related to the East African Legislative Assembly (EALA) and the EACJ, failure to fully implement the EAC Customs Union and multiple memberships to regional economic communities. Relying on these facts, this study sought to investigate the role of national interest in regional integration by specifically evaluating the impact of Kenya's national interest on regional integration in the EAC.

5.1 Summary

The study utilized both primary and secondary sources of data. Primary sources included interviews with major stakeholders in regional integration in the EAC while secondary sources comprised of publications in regional integration including journals on the same. Key literature reviewed on theories of regional and national interest and regional integration in Africa revealed tensions between national interest and integration in Africa. National interest has a negative impact on regional integration in the EAC. National sovereignty is the basis on which negotiations for setting up sub-regional and regional functional organisations are conducted. This generates strong inclinations to protect national identity and promote national interests³⁰².

³⁰² J. Senghor C., 'Theoretical Foundations for Regional Integration in Africa: An Overview' in Nyong'o, Anyang (ed), *Regional integration in Africa: Unfinished Agenda* Op. Cit. p. 26

National interest and regional integration are two processes that are antagonistic to one another on three counts. First while nationalism aims at creating boundaries with each nation occupying a native home or territory, regional integration seeks to both undermine the territorial basis of a nation and facilitate the free movement of people. Secondly, whilst nationalism seeks to enhance cultural and other forms of identity of particularism, integration is a universalising process, seeking to create new forms of identity or forms of citizenship not based on the nation state. Thirdly, whilst nationalism seeks to enhance the sovereignty of the nation state, regionalism seeks to undermine it³⁰³. The realist theory focus on national interest and survival may be the key to understanding why functionalism and neo-functionalism led regional integration has failed in Africa.

Chapter two looked at theories of regional integration, their explanation of regional integration and application in and relevance to the experience of integration in Africa generally, and East African in particular. The theories of integration have managed to account for some aspects of regional integration in Africa and failed to account for others. Theories of integration are relevant to the integration process in Africa and East Africa in particular, but they do not sufficiently describe the events thereof. More generally, a survey of African regional integration schemes suggests that the design and implementation of many of the arrangements in effect actually constrain rather than promote Integration. Africa's regional integration schemes have generally not been fully implemented as designed³⁰⁴. The chapter noted that the unwillingness of governments to subordinate immediate national political interests to long-term regional goals or to cede

³⁰³ K. P. Apuuli, 'Fast Tracking East African Federation: Asking the Difficult Questions', *op.cit*

³⁰⁴ T. Ademola Oyejide Policies for Regional Integration in Africa, *op.cit.* p.9

essential elements of sovereignty to regional institutions is one of the biggest obstacles to regional integration³⁰⁵.

The conceptual analysis in chapter two gave way to the in-depth examination of the regional integration efforts in the East African Community. Chapter three reviewed efforts towards regional integration in the EAC and also assessed the impact of national interest of member states on regional integration. One of the reasons advanced for the collapse of EAC in 1977 was that Kenya was receiving a disproportionate share of the benefits of integration. Various measures were tested to redistribute the gains from the common market, but failed to produce the results Uganda and Tanzania wanted³⁰⁶. The institutional machinery of the old EAC lacked an autonomous body with at least power of initiative and supervision. Consequently, the East African regional institutions could hardly play a dynamic and mediatory role in harmonizing partner states' national interests³⁰⁷.

National interest was a challenge that bedevilled the old EAC and continues to rear its head in the new EAC. Lack of an enforcement machinery and sanction mechanism for agreements including the Treaty is a challenge. As a result national interest prevails because there are no penalties for lack of implementation, and an EAC Secretariat without legal executive authority for enforcement, EAC programmes remain unimplemented. Additional factors include: apparent lack of commitment to implement decisions; failure to communicate agreed decisions to bureaucrats responsible for implementation in time or none at all; resistance by high level bureaucrats in government

³⁰⁵ M. Nyirabu, 'Appraising Regional Integration in Southern Africa' op.cit p. 27

³⁰⁶ L. Kasekende and N. Ng'eno, 'Regional Integration and Economic Integration in Eastern and Southern Africa' in A. Oyejide, I. El Badawi and P. Collier (eds.), *Regional Integration and Trade Liberalisation in Sub-Saharan Africa: Framework, Issues and Methodological Perspectives* op.cit p. 82

³⁰⁷ A. Mutere, 'Regional Cooperation and Anatomy of Conflict', *Southern Africa Political and Economy Monthly* op.cit pp. 8-9: 8

institutions; delays in ratification of protocols; frequent backtracking on decisions taken due to a divided loyalty between state and regional pressures; and lack of implementation strategies and plans with implicit timeframes for implementation of decisions taken³⁰⁸.

The chapter concluded that a state's pursuit of its own national interest as a priority is often at the detriment of integration. Full integration in the EAC will not be achieved in a significant way until the members entrench the Treaty Establishing the EAC by setting up an executive authority at the EAC level and cede sovereignty to it. This will guard it against amendments to align the Treaty with national laws and interests of member states.

Chapter four critically examined how Kenya's national interest impacts on renewed efforts at regional integration in the EAC. It covers the period 2000-2007. It cross-examined Kenya's adherence to EAC Customs Union Protocol, election of members to the East African Legislative Council (EALA); respecting the independence and autonomy of the East African Court of Justice (EACJ); and multiple memberships to other regional economic communities. The chapter notes that Kenya has in some instances prioritized its national interest over regional interests. It further notes that in so doing, Kenya hampers the attainment of the national interest of the other countries in the community and the overall goal of regional integration in the EAC.

5.2 Conclusion

Following the research components examined in the study, this section outlines the key conclusions of the study. The study examined a number of theories on the regional integration and the role of national interest. It established that national interest could destabilise regional integration unless it is subordinated to regional interests. The study

³⁰⁸ EAC, *Report of the Committee on Fast Tracking East African Federation* op.cit. para. 197

acknowledged that national sovereignty is the basis on which negotiations for setting up sub-regional and regional functional organisations are conducted. This generates strong inclinations to protect national identity and promote national interests³⁰⁹.

On one hand, realists argue that our anarchic world order lacks an over-riding sovereign authority which can bind individual states to a regime of cooperation. Under these circumstances, states lack the institutional structures for the delivery of collective goods, because of the expectation that some states will would not be bound by collective decisions or would seek to 'free ride' on the contributions made by others. Thus, the absence of an overarching world authority means that states are unable and unwilling to cooperate even where such cooperation would be to every state's individual advantage³¹⁰.

On the other hand, others disagree, they rightly posit that institutionalisation of inter-states relations could diminish the idea of anarchy. There may be institutions embodying conventions, rules and established practices which serve to stabilise inter-state relations. Sometimes these institutional orders are identified with an idea of systemic international regimes-where a regime is taken to describe a set of rules and institutions through which relations between states and their representatives are managed. Regimes need not be (indeed, they may normally not be) world-wide, but for those who participate, they bring a certain amount of order, predictability and rule-guidedness to international affairs³¹¹.

The Study noted that the EAC has established rules and institutions to manage integration but countries like Kenya have violated them as discussed in chapter four. The

³⁰⁹ J. Senghor C., 'Theoretical Foundations for Regional Integration in Africa: An Overview' in Nyong'o, Anyang (ed), *Regional integration in Africa: Unfinished Agenda* Op. Cit. p. 26

³¹⁰ C. Pierson, *The Modern State*, 2nd edition. op.cit. p. 135

³¹¹ R. O Keohane, *International Institutions and State Power* op.cit. p. 9

EAC members are yet to cede sovereignty to the EAC institutions which is key to managing national interests in a way that ensure benefits for all members. Thus a mechanisms to esure the implementation of mutual agreements is lacking. The regional instutions largely reiman Secretariats for inter-governmetal consultations with implementation and enforcement powers remaining at the national level.

The study concurred with scholars who assert that the norms of the international community are in tumult. The previous stress on sovereignty above all other considerations is now outdated. As former UN Secretary General Boutros Boutros-Ghali famously noted, "The time of absolute and exclusive sovereignty, however, has passed; its theory was never matched by reality"³¹². More generally flux induced by the end of the Cold War opens up the possibility for new organisational forms³¹³. To further development of alternatives to the current state system, the international community and African countries can also begin to understand African problems on a regional basis without regard to country boundaries³¹⁴.

The study noted that regions cannot be merely economic groupings, especially of the neo-liberal kind. They must also be conceived as political areas and define social content capable of strengthening the position of the working classes and the under privileged subregions. The reform programme should therefore make it possible to combine respect for sovereignty of peoples (gradually taking over from the sovereignty of states) with the democracy that is its precondition. The proposed sovereignty of the peoples, based on the principles of democracy and social justice, requires mobilisation of

³¹² B. Boutros-Ghali, *An Agenda for Peace* (New York: United Nations, 1995) p. 44

³¹³ J. Herbst, *States and Power in Africa: Comparative Lessons in Authority and Control* (New Jersey: Princeton University Press, 2000) p. 259

³¹⁴ Ibid. p. 263

all the energies capable of creative imagination and recognition of diversity of their contributions³¹⁵.

As Samir Amin posits, if a polycentric and pluralist model of globalisation is to be re-built, offering a vision of progress to vulnerable regions that lack the means to take advantage of their insertion into global competition, then institution-building will have to take place at a regional as well as global level. For the multipolar world will have to involve a process of regionalisation³¹⁶.

Regional integration has political costs and benefits. There a number of benefits, namely: enhanced security of members and reduction of the work of intra-regional conflicts; strengthening of bargaining power as a regional bloc; facilitation of sharing of project cooperation (such as sharing of such resources as rivers, lakes, fishing grounds, hydroelectric power, rail connections) and cooperation to deal with trans-border problems such as pollution and transport bottlenecks; provision of a “commitment mechanism” for trade and other policy reforms; and greater feasibility in relation to unilateral or multilateral trade liberalisation. They posit that the most important political cost of regional integration is the greater loss of national sovereignty³¹⁷. Thus, states have to come up with ways of managing interests in order to achieve their integration goals.

The study identified possible ways of managing national interest to enhance regional integration. The failure of the old East African experiment, once heralded as the best model for Africa, offers hard lessons that will need to be borne in mind in any attempt at further regional unity and economic integration in East Africa.

³¹⁵ S. Amin, *Beyond US Hegemony?: Assessing the Prospects for a Multipolar World*, (London: Zed Books), 2006 p. 130

³¹⁶ Ibid. p. 129

³¹⁷ N. Ng'eno K., (et al), *Regional Integration Study of East Africa: The Case of Kenya* Op. Cit. p. 19-20

As noted by the EAC Fast Tracking Committee, lack of an enforcement machinery and sanction mechanism is a major challenge. As a result national interest prevails because there are no penalties for lack of implementation, and an EAC Secretariat with no legal executive authority for enforcement, EAC programmes remain unimplemented. Additional factors include: apparent lack of commitment to implement decisions; failure to communicate agreed decisions to bureaucrats responsible for implementation in time or none at all; resistance by high level bureaucrats in government institutions; delays in ratification of protocols; frequent backtracking on decisions taken due to a divided loyalty between state and regional pressures; and lack of implementation strategies and plans with implicit timeframes for implementation of decisions taken³¹⁸.

It has also been argued, and justifiably so, that starting with a political federation in the EAC would minimise the current divided loyalty –between national and regional interests-when negotiating and implementing economic integration process. Experiences from negotiations of the EAC Custom Union, revealed a nationalist posturing by the partner states, with all the concerned parties looking at issues through a national rather than the collective common interest³¹⁹. A political federation will provide an avenue for ceding executive powers to EAC institutions. Consequently, negotiations will be carried out by bureaucrats and political leaders in the EAC and that will go a long way in shifting focus from national to joint regional interests. Where there is no agreement on regional interests, in a political federation there are mechanisms for dialogue and consensus building unlike in the current EAC arrangement where all decisions are made at national level.

³¹⁸ EAC, *Report of the Committee on Fast Tracking East African Federation* op.cit. para. 197

³¹⁹ EAC, *Report of the Committee on Fast Tracking East African Federation* op.cit. para. 300

For the regional integration in the EAC to be successful, as noted in the Treaty, it must incorporate full ownership and participation of the people, especially through their institutions of choice. Civil society organisations have a role in order to ensure that the previous mistakes of the community are not repeated. The active participation of civil society in the activities of the community will provide the necessary impetus in the development of the community³²⁰. This will guard against the definition of interest by small cliques in power or the business community. Currently, few citizens understand the benefits of regional integration or commitments made by their governments at the EAC level. Raising awareness of the people about regional integration benefits and agreements and commitments made at regional level, will further act as a check on governments to implement what they have signed on to.

Regional integrational will not be successful in the EAC without conflict resolution and the improvement of relations among people by capitalizing on cultural, educational and scientific cooperation. This, in turn, will reduce tension and assist efforts in confidence building. It will absorb political tensions and improve the environment for dialogue and dispute settlement³²¹. In the EAC, past negative perceptions and suspicions, especially of Kenya continue to persist. Kenya needs to go on a charm offensive to reassure all members that it will not dominate the new EAC and demonstrate that by complying with the EAC Treaty, institutions and protocols such as the customs unions. As the dominant economy in the region, Kenya also needs to be seen to take lead in the regional integration process. Other states in Africa that are strong diplomatically and economically have taken on the mantle of leadership of integration in their regions:

³²⁰ East African Community, *Treaty Establishing the East African Community op.cit.* Article 127(3) and 4

³²¹ K. Abraham, 'The Challenges and Prospects of Pan African Economic Integration', *op.cit.* pp. 13-26

Nigeria leads in West Africa, South Africa leads in Southern Africa and Libya in Northern Africa. The other members also have a role to honestly discuss their fears of Kenya, assess them objectively and jointly come up with ways of ensuring that all members benefit from integration under the EAC.

The issue of multiple membership has to be addressed urgently as several RECs in Africa move into customs unions. Given the high costs and impracticalities of being a member of more than one customs union without harmonisation of tariffs, countries should reduce their membership to one customs union to enhance integration and to reap maximum benefits from it. Kenya will benefit greatly from focussing on the EAC given that the region provides the biggest market for its goods and it is expanding its investments in the region rapidly. If Kenya insists on remaining a member of COMESA, it should lead and support the fast tracking of the harmonisation of tariffs between EAC and COMESA before the two regions achieve full customs union status. That process of harmonisation has not been advancing as fast as it should be given that both RECs are moving into customs unions by 2010.

This study was not without limitations. Given the scope of this study, in terms of the time frame and main objective, it left out a critical element that would have concretised its major findings. It was impossible to examine how the pursuit of national interest by other members of the EAC-particularly Uganda and Tanzania-hampers regional integration and how it can be managed. This identified element has been left out for future research.

5.3 Suggestions for Further Research

Other areas for further research include:

1. The treaties and protocols signed to make integration possible place a lot of emphasis on economic gains as the main motivating factor for integration. However, in practice politics seems to play a more central role in determining the level of integration.
2. The implications and impact of the foreign policies of the member states to the East African Community on their capacity to pursue and achieve regional integration objectives.
3. Effects of trade liberalization policies on the integration process within the EAC.
4. The effects of projectization of the integration process due to the limited resources that have given rise to dependency on donor funds to support many of the initiatives of the Community: What implications for the long term visioning of the Community?
5. The extent to which the existence of the EAC has contributed to intra-regional trade flows and cross – border transactions.

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East African Federation Hearings *EAC Headquarters, Arusha, 21 October 2004*
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Interviews

Abdul-Raheem, Tajudeen is the Deputy Director-Africa UN Millennium Campaign and
the immediate former Secretary General of the Pan African Movement. This
comment is based on an interview conducted by the researcher on 24 July 2008,
Nairobi

Deya, Don is the Chief Executive Officer of the East African Law Society (EALS). This
comment is based on an interview conducted by the researcher on 29 July 2008,
Nairobi

Kaahwa, Wilbert T.K. is the Counsel to the East African Community, EAC Secretariat
Arusha. This comment is based on an interview conducted by the researcher via
email received on 5 August 2008 from Arusha Tanzania

Kagoro, Brian is the Pan African Policy Manager in ActionAid International. This
comment is based on an interview conducted by the researcher on 23 July 2008,
Nairobi

Kamanga, Khoti is a Senior Lecturer in the Faculty of Law, University of Dar es Salaam.
This comment is based on an interview conducted by the researcher on phone
from Kampala on 1 August 2008

Kamau, Walter is the Executive Officer, Trade Policy and Dickson Poloji is the Executive Officer, Policy and Research both in the Kenya Association of Manufacturers. This comment is based on an interview conducted by the researcher on 7 August 2008, Nairobi

Kibara, Gichira is the Secretary of the Justice and Constitutional Affairs in the Ministry of Justice, National Cohesion and Constitutional Affairs (Kenya). This comment is based on an interview conducted by the researcher on 30 July 2008, Nairobi

Maina, Chris Peters is a professor at the University of Dar es Salaam. This comment is based on an interview conducted by the researcher via email received on 1 August 2008 from Geneva.

Member of Staff (requested Anonymity) of the EAC Department in the Ministry of Foreign Affairs (Kenya). This comment is based on an interview conducted by the researcher on 30 July 2008, Nairobi

Mongella, Getrude is the President in the Pan African Parliament, a member of parliament in Tanzania and a former member of the old EAC Assembly (1975-77). This comment is based on an interview conducted by the researcher on 22 July 2008, Nairobi

Mute, Lawrence is the former Board Member , Kituo cha Katiba and Commissioner in the Kenya National Human Rights Commission. This comment is based on an interview conducted by the researcher on 30 July 2008, Nairobi

Nalo, David is the Permanent Secretary in the Ministry of East African Cooperation Kenya. This comment is based on an interview conducted by the researcher on 4 August 2008, Nairobi

Oloka-Onyango, Joe is a senior Lecturer at the Faculty of Law, Makerere University (Uganda).

This comment is based on an interview conducted by the researcher on phone from Oxford University, UK on 26 July 2008

Wanyoto, Lydiah Mutende is a Ugandan member of parliament in the East African Legislative Assembly. This comment is based on an interview conducted by the researcher on 21 July 2008, Nairobi

Waruhiu, Rose is the former Member of the East Africa Legislative Assembly (Kenya). This comment is based on an interview conducted by the researcher on 6 August 2008, Nairobi

APPENDICES

A Unstructured Interview Schedules

Schedule 1

Hon Lydiah Wanyoto Mutende (Uganda)
MP, East African Legislative Assembly
In Nairobi. July 21, 2008

1. What holds the EAC together today?
2. Are national benefits the main impetus of integration in East Africa?
3. What role has Kenya played in promoting integration in the EAC?
4. In the recent past Kenya was accused of not following the EAC Treaty Provisions and its own parliamentary rules on the election of members to the East Africa Legislative Assembly that led to a case in the East Africa Court of Justice (EACJ). After the ruling Kenya argued that it undermined its sovereignty and pushed for the amendment of the EACJ Treaty to allow for recall of judges. The whole process delayed the inauguration of the Parliament for 7 months although other members of EAC had elected their representatives as per the EAC Treaty.
-In your opinion did Kenya undermine regional integration by doing the above?
-Is Kenya justified to claim that a court it was party in creating is undermining its sovereignty?
-What lessons can be drawn from that process and its outcomes?
5. Do you think the EAC will attain a political federation by 2010 as envisaged? Why?
6. Do you think national interest can be managed to enhance regional integration in the EAC?
7. If so, how?

Schedule 2

Hon Dr Getrude Mongella
President, Pan African Parliament
MP (Tanzania)
Former Member of the old EAC Assembly (1975-77)
In Nairobi. July 22, 2008

1. What holds the EAC together today?
2. Are national benefits the main impetus of integration in East Africa?
3. In the recent past Kenya was accused of not following the EAC Treaty Provisions and its own parliamentary rules on the election of members to the East Africa Legislative Assembly that led to a case in the East Africa Court of Justice (EACJ). After the ruling Kenya argued that it undermined its sovereignty and pushed for the amendment of the EACJ Treaty to allow for recall of judges. The

whole process delayed the inauguration of the Parliament for 7 months although other members of EAC had elected their representatives as per the EAC Treaty.

-In your opinion did Kenya undermine regional integration by doing the above?

4. Do you think the EAC will attain a political federation by 2010 as envisaged? Why?
5. What are the costs of a political federation?
6. Do you think national interest can be managed to enhance regional integration in the EAC?
Yes
7. If so, how?

Schedule 3

Mr Brian Kagoro
Pan African Policy Manager
ActionAid International
In Nairobi. July 23, 2008

1. What holds the EAC together today?
2. Are national benefits the main impetus of integration in East Africa?
3. What role has Kenya played in promoting integration in the EAC?
4. In the recent past Kenya was accused of not following the EAC Treaty Provisions and its own parliamentary rules on the election of members to the East Africa Legislative Assembly that led to a case in the East Africa Court of Justice (EACJ). After the ruling Kenya argued that it undermined its sovereignty and pushed for the amendment of the EACJ Treaty to allow for recall of judges. The whole process delayed the inauguration of the Parliament for 7 months although other members of EAC had elected their representatives as per the EAC Treaty.
-In your opinion did Kenya undermine regional integration by doing the above?
-Is Kenya justified to claim that a court it was party in creating is undermining its sovereignty?
-What lessons can be drawn from that process and its outcomes?
5. Do you think the EAC will attain a political federation by 2010 as envisaged? Why?
6. What are the costs of a political federation?
7. Do you think national interest can be managed to enhance regional integration in the EAC?
8. If so, how?

Schedule 4

Dr Tajudeen Abdul Raheem
Deputy Director-Africa UN Millennium Campaign
Immediate Former Secretary General-Pan African Movement
In Nairobi. July 24, 2008

1. What holds the EAC together today?
2. Are national benefits the main impetus of integration in East Africa?
3. What role has Kenya played in promoting integration in the EAC?
4. Are there instances that Kenya has acted in ways that could or have affected the integration process in the EAC negatively?
5. If yes, name them.
6. In the recent past Kenya was accused of not following the EAC Treaty Provisions and its own parliamentary rules on the election of members to the East Africa Legislative Assembly that led to a case in the East Africa Court of Justice (EACJ). After the ruling Kenya argued that it undermined its sovereignty and pushed for the amendment of the EACJ Treaty to allow for recall of judges. The whole process delayed the inauguration of the Parliament for 7 months although other members of EAC had elected their representatives as per the EAC Treaty.
-In your opinion did Kenya undermine regional integration by doing the above?
-Is Kenya justified to claim that a court it was party in creating is undermining its sovereignty?
-What lessons can be drawn from that process and its outcomes?
7. Do you think the EAC will attain a political federation by 2010 as envisaged? Why?
8. What are the costs of a political federation?
9. Do you think national interest can be managed to enhance regional integration in the EAC?
10. If so, how?

Schedule 5

Dr Joe Oloka-Onyango

Senior Lecturer, Faculty of Law

Makerere University (Uganda)

On Phone from Oxford University, UK. July 26, 2008

1. What holds the EAC together today?
2. Are national benefits the main impetus of integration in East Africa?
3. Are there instances that Kenya has acted in ways that could or have affected the integration process in the EAC negatively? If yes, name them.
4. In the recent past Kenya was accused of not following the EAC Treaty Provisions and its own parliamentary rules on the election of members to the East Africa Legislative Assembly that led to a case in the East Africa Court of Justice (EACJ). After the ruling Kenya argued that it undermined its sovereignty and pushed for the amendment of the EACJ Treaty to allow for recall of judges. The whole process delayed the inauguration of the Parliament for 7 months although other members of EAC had elected their representatives as per the EAC Treaty.
-In your opinion did Kenya undermine regional integration by doing the above?

- Is Kenya justified to claim that a court it was party in creating is undermining its sovereignty?
- What lessons can be drawn from that process and its outcomes?
- 5. Do you think the EAC will attain a political federation by 2010 as envisaged? Why?
- 6. Do you think national interest can be managed to enhance regional integration in the EAC? If so, how?

Schedule 6

Mr Gichira Kibara

Secretary, Justice and Constitutional Affairs (Kenya)

Ministry of Justice, National Cohesion and Constitutional Affairs (Kenya)

In Nairobi. July 30, 2008

1. Are national benefits the main impetus of integration in East Africa?
 2. What role has Kenya played in promoting integration in the EAC?
 3. Are there instances that Kenya has acted in ways that could or have affected the integration process in the EAC negatively? If yes, name them.
 4. In the recent past Kenya was accused of not following the EAC Treaty Provisions and its own parliamentary rules on the election of members to the East Africa Legislative Assembly that led to a case in the East Africa Court of Justice (EACJ). After the ruling Kenya argued that it undermined its sovereignty and pushed for the amendment of the EACJ Treaty to allow for recall of judges. The whole process delayed the inauguration of the Parliament for 7 months although other members of EAC had elected their representatives as per the EAC Treaty.
- In your opinion did Kenya undermine regional integration by doing the above?
 - Is Kenya justified to claim that a court it was party in creating is undermining its sovereignty?
 - What lessons can be drawn from that process and its outcomes?
 - 5. Do you think the EAC will attain a political federation by 2010 as envisaged? Why?
 - 6. What are the costs of a political federation?
 - 7. Do you think national interest can be managed to enhance regional integration in the EAC? If so, how?

Schedule 7

Walter Kamau and Dickson Poloji

Walter Kamau, Executive Officer, Trade Policy

Dickson Poloji, Executive Officer, Policy and Research

Kenya Association of Manufacturers

In Nairobi. August 7, 2008

1. Are national benefits the main impetus of integration in East Africa?
2. What role has Kenya played in promoting integration in the EAC?

3. Are there instances that Kenya has acted in ways that could or have affected the integration process in the EAC negatively? If yes, name them.
4. Were the actions driven by Kenya's national interests or the broader interests of integration in the EAC?
5. In the recent past Kenya was accused of not following the EAC Treaty Provisions and its own parliamentary rules on the election of members to the East Africa Legislative Assembly that led to a case in the East Africa Court of Justice (EACJ). After the ruling Kenya argued that it undermined its sovereignty and pushed for the amendment of the EACJ Treaty to allow for recall of judges. The whole process delayed the inauguration of the Parliament for 7 months although other members of EAC had elected their representatives as per the EAC Treaty.
 - In your opinion did Kenya undermine regional integration by doing the above?
 - Is Kenya justified to claim that a court it was party in creating is undermining its sovereignty?
 - What lessons can be drawn from that process and its outcomes?
6. Do you think the EAC will attain a political federation by 2010 as envisaged? Why?
7. What are the costs of a political federation?
8. Do you think national interest can be managed to enhance regional integration in the EAC? If so, how?

Schedule 8

Lawrence Mute

Former Board Member, Kituo cha Katiba

Commissioner-Kenya National Human Rights Commission

In Nairobi. July 30, 2008

1. What holds the EAC together today?
2. Are national benefits the main impetus of integration in East Africa?
3. What role has Kenya played in promoting integration in the EAC?
4. In the recent past Kenya was accused of not following the EAC Treaty Provisions and its own parliamentary rules on the election of members to the East Africa Legislative Assembly that led to a case in the East Africa Court of Justice (EACJ). After the ruling Kenya argued that it undermined its sovereignty and pushed for the amendment of the EACJ Treaty to allow for recall of judges. The whole process delayed the inauguration of the Parliament for 7 months although other members of EAC had elected their representatives as per the EAC Treaty.
 - Is Kenya justified to claim that a court it was party in creating is undermining its sovereignty?
 - What lessons can be drawn from that process and its outcomes?
5. Do you think the EAC will attain a political federation by 2010 as envisaged? Why?

6. Do you think national interest can be managed to enhance regional integration in the EAC? If so, how?

Schedule 9

Don Deya

Chief Executive Officer

East African Law Society (EALS)

In Nairobi. July 29, 2008

1. What holds the EAC together today?
2. Are national benefits the main impetus of integration in East Africa?
3. What role has Kenya played in promoting integration in the EAC?
4. Are there instances that Kenya has acted in ways that could or have affected the integration process in the EAC negatively? Yes
5. If yes, name them...
6. Were the actions driven by Kenya's national interests or the broader interests of integration in the EAC?
7. In the recent past Kenya was accused of not following the EAC Treaty Provisions and its own parliamentary rules on the election of members to the East Africa Legislative Assembly that led to a case in the East Africa Court of Justice (EACJ). After the ruling Kenya argued that it undermined its sovereignty and pushed for the amendment of the EACJ Treaty to allow for recall of judges. The whole process delayed the inauguration of the Parliament for 7 months although other members of EAC had elected their representatives as per the EAC Treaty.

-In your opinion did Kenya undermine regional integration by doing the above?
-What lessons can be drawn from that process and its outcomes?
8. Do you think the EAC will attain a political federation by 2010 as envisaged? Why?
9. What are the costs of a political federation?
10. Do you think national interest can be managed to enhance regional integration in the EAC? If so, how?

Schedule 10

Member of Staff (requested Anonymity)

EAC Department

Ministry of Foreign Affairs (Kenya).

In Nairobi. July 30, 2008

1. What holds the EAC together today?
2. Are national benefits the main impetus of integration in East Africa?
3. What role has Kenya played in promoting integration in the EAC?
4. In the recent past Kenya was accused of not following the EAC Treaty Provisions and its own parliamentary rules on the election of members to the East Africa Legislative Assembly that led to a case in the East Africa Court of Justice

(EACJ). After the ruling Kenya argued that it undermined its sovereignty and pushed for the amendment of the EACJ Treaty to allow for recall of judges. The whole process delayed the inauguration of the Parliament for 7 months although other members of EAC had elected their representatives as per the EAC Treaty.

- Is Kenya justified to claim that a court it was party in creating is undermining its sovereignty?
- What lessons can be drawn from that process and its outcomes?
- 5. Do you think the EAC will attain a political federation by 2010 as envisaged? Why?
- 6. What are the costs of a political federation?
- 7. Do you think national interest can be managed to enhance regional integration in the EAC? If so, how?

Schedule 11

Hon Wilbert T.K. Kaahwa

Counsel to the East African Community, EAC Secretariat Arusha

By e-mail from Arusha, Tanzania. August 5, 2008

1. What holds the EAC together today?
2. Are national benefits the main impetus of integration in East Africa?
3. What role has Kenya played in promoting integration in the EAC?
4. Are there instances that Kenya has acted in ways that could or have affected the integration process in the EAC negatively?
5. In the recent past Kenya was accused of not following the EAC Treaty Provisions and its own parliamentary rules on the election of members to the East Africa Legislative Assembly that led to a case in the East Africa Court of Justice (EACJ). After the ruling Kenya argued that it undermined its sovereignty and pushed for the amendment of the EACJ Treaty to allow for recall of judges. The whole process delayed the inauguration of the Parliament for 7 months although other members of EAC had elected their representatives as per the EAC Treaty.
 - In your opinion did Kenya undermine regional integration by doing the above?
 - Is Kenya justified to claim that a court it was party in creating is undermining its sovereignty?
 - What lessons can be drawn from that process and its outcomes?
6. Do you think the EAC will attain a political federation by 2010 as envisaged? Why?
7. What are the costs of a political federation?
8. Do you think national interest can be managed to enhance regional integration in the EAC?
9. If so, how?

Schedule 12

Prof Chris Maina Peters

University of Dar es Salaam

By e-mail from Geneva. August 1, 2008

1. What holds the EAC together today?
2. Are national benefits the main impetus of integration in East Africa?
3. What role has Kenya played in promoting integration in the EAC?
4. Are there instances that Kenya has acted in ways that could or have affected the integration process in the EAC negatively?
5. If yes, name them.
6. Were the actions driven by Kenya's national interests or the broader interests of integration in the EAC?
7. In the recent past Kenya was accused of not following the EAC Treaty Provisions and its own parliamentary rules on the election of members to the East Africa Legislative Assembly that led to a case in the East Africa Court of Justice (EACJ). After the ruling Kenya argued that it undermined its sovereignty and pushed for the amendment of the EACJ Treaty to allow for recall of judges. The whole process delayed the inauguration of the Parliament for 7 months although other members of EAC had elected their representatives as per the EAC Treaty.
 - In your opinion did Kenya undermine regional integration by doing the above?
 - Is Kenya justified to claim that a court it was party in creating is undermining its sovereignty?
 - What lessons can be drawn from that process and its outcomes?
8. Do you think the EAC will attain a political federation by 2010 as envisaged? Why?
9. What are the costs of a political federation?
10. Do you think national interest can be managed to enhance regional integration in the EAC?
11. If so, how?

Schedule 13

Mr David Nalo
Permanent Secretary
Ministry of East African Cooperation Kenya
In Nairobi. August 4, 2008

1. What holds the EAC together today?
2. Are national benefits the main impetus of integration in East Africa?
3. Have multiple memberships to Regional Economic Communities by EAC members hampered integration in the EAC?
4. What role has Kenya played in promoting integration in the EAC?
5. In the recent past Kenya was accused of not following the EAC Treaty Provisions and its own parliamentary rules on the election of members to the East Africa Legislative Assembly that led to a case in the East Africa Court of Justice (EACJ). After the ruling Kenya argued that it undermined its sovereignty and pushed for the amendment of the EACJ Treaty to allow for recall of judges. The whole process delayed the inauguration of the Parliament for 7 months although other members of EAC had elected their representatives as per the EAC Treaty.
 - In your opinion did Kenya undermine regional integration by doing the above?

-Is Kenya justified to claim that a court it was party in creating is undermining its sovereignty?

-What lessons can be drawn from that process and its outcomes?

6 Do you think the EAC will attain a political federation by 2010 as envisaged? Why?

7 Do you think national interest can be managed to enhance regional integration in the EAC? If so, how?

Schedule 14

Hon Rose Waruhiu

Former Member of the East Africa Legislative Assembly (Kenya)

In Nairobi. August 6, 2008

1. Are national benefits the main impetus of integration in East Africa?
2. What role has Kenya played in promoting integration in the EAC?
3. Are there instances that Kenya has acted in ways that could or have affected the integration process in the EAC negatively? If yes, name them.
4. Were the actions driven by Kenya's national interests or the broader interests of integration in the EAC?
5. In the recent past Kenya was accused of not following the EAC Treaty Provisions and its own parliamentary rules on the election of members to the East Africa Legislative Assembly that led to a case in the East Africa Court of Justice (EACJ). After the ruling Kenya argued that it undermined its sovereignty and pushed for the amendment of the EACJ Treaty to allow for recall of judges. The whole process delayed the inauguration of the Parliament for 7 months although other members of EAC had elected their representatives as per the EAC Treaty.

-Is Kenya justified to claim that a court it was party in creating is undermining its sovereignty?

-What lessons can be drawn from that process and its outcomes?

6. Do you think the EAC will attain a political federation by 2010 as envisaged? Why?

7. Do you think national interest can be managed to enhance regional integration in the EAC? If so, how?

Schedule 15

Dr Khoti Kamanga

Senior Lecturer, Faculty of Law

University of Dar es Salaam

On phone from Kampala. August 1, 2008

1. What holds the EAC together today?

2. In the recent past Kenya was accused of not following the EAC Treaty Provisions and its own parliamentary rules on the election of members to the East Africa Legislative Assembly that led to a case in the East Africa Court of Justice (EACJ). After the ruling Kenya argued that it undermined its sovereignty and pushed for the amendment of the EACJ Treaty to allow for recall of judges. The whole process delayed the inauguration of the Parliament for 7 months although other members of EAC had elected their representatives as per the EAC Treaty.
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 - What lessons can be drawn from that process and its outcomes?
3. Do you think the EAC will attain a political federation by 2010 as envisaged? Why?
4. What are the costs of a political federation?
5. Do you think national interest can be managed to enhance regional integration in the EAC? If so, how?

B Respondents

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MP, East African Legislative Assembly
In Nairobi. July 21, 2008
- 2 Hon Dr Getrude Mongella
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MP (Tanzania)
Former Member of the old EAC Assembly (1975-77)
- 3 Mr Brian Kagoro
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ActionAid International
- 4 Dr Tajudeen Abdul Raheem
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- 5 Dr Joe Oloka-Onyango
Seniour Lecterer, Faculty of Law
Makerere University (Uganda)
- 6 Mr Gichira Kibara
Secretary, Justice and Constitutional Affairs (Kenya)
Ministry of Justice, National Cohesion and Constitutional Affairs (Kenya)
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- 13 Mr David Nalo
Permanent Secretary
Ministry of East African Cooperation Kenya
- 14 Hon Rose Waruhiu
Former Member of the East Africa Legislative Assembly (Kenya)
Claimant in the case over EALA Nominations to EACJ
- 15 Dr Khoti Kamanga
Senior Lecturer, Faculty of Law
University of Dar es Salaam