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INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES

(IDIS)

**THE NEGOTIATION FOR THE INTEGRATION OF THE EAST
AFRICAN COMMUNITY (1996-2004)**

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**IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE
AWARD OF MASTER OF ARTS DEGREE IN INTERNATIONAL
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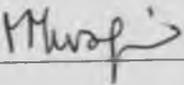
DECLARATION

This dissertation is my original work and has not been presented for a degree in another university.

Signature:  _____

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

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DEDICATION

This work is dedicated to my daughter Jasmine, who inspires me in ways she cannot yet understand, and the rest of my family for their invaluable support and for believing in me.

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The period during which I was undertaking my master's degree at the University of Nairobi was enlightening. I have encountered many people from whom I have learnt a lot, besides exchanging ideas that have widened my perception about the world I have made established new bonds of friendship.

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ABSTRACT

This paper discusses the negotiation for integration with reference to the East African Community in the period 1996-2004. The purpose of this study is to show the relationship between negotiation and integration. The study considers negotiation to be an integral part of the integration process and the determining factor in the regional integration of states. How issues were handled in each phase of the negotiation process determines the viability of the created bloc in terms of longevity and function. In this regard it is important to understand the nature and the context in which the process made an impact on the revival of the East African Community. Integration of the second East African Community was possible because negotiations among the partner states were held in order to diminish the dilemma they faced, regarding divergent views about shared and individual interests.

This study will therefore revisit the negotiations that led to the replatforming of the defunct establishment, in order to return to cooperation and integration. It focuses on the period 1996-2004 where a lot of negotiation took place with the aim of reviving cooperation and integration in the region, and creating a fully operational customs union. It will show the link between negotiations and regional integration by analyzing how the negotiation process facilitated the integration. The study is undertaken with the conviction that regional integration transcends all aspects of human society. The relevance of the study lies in the realization that the world is becoming globalized and Africa as a region and East Africa as a sub-region needs to cooperate in order to benefit from this process of globalization. A study that deals with understanding the contribution of negotiation to cooperation and subsequent integration for mutual and shared interests in all spheres is thus relevant and timely.

ABBREVIATIONS

CARICOM	Caribbean Common Market
CARIFTA	Caribbean Free Trade Area
COMESA	Common Market for East and Southern Africa
CSME	Caribbean Single Market Economy
CET	Common External Tariff
EAC	East African Community
ECOWAS	Economic Community of West African States
EU	European Union
PTA	Preferential Trade Area
PTC	Permanent Tripartite Commission
SADC	Southern Africa Development Community
UN	United Nations
UNDP	United Nations Development Programme
WTO	World Trade Organization

CHAPTER 1: BACKGROUND

1.0 INTRODUCTION

Regional integration is important because it enables states that are not economically large enough to construct a modern economy on their own, despite the resources for industrialization and markets available to support these large scale complexes, to merge their economies with others in the same geographical region in a bid to advance and find a place in the global society¹. Regional integration also promotes peace and stability. Regions integrate after negotiation of values, interests and positions² that would otherwise separate them. This is because negotiation is a powerful vehicle in changing ones perceptions of others and influencing their behavior in a particular desired way. Hence, scholars like Putnam³ have taken great interest in the dynamics of the negotiation process affecting regional cooperation and economic integration as its relevance has continued to increase exponentially in recent times.

In the 1950s and 1960s, Pan Africanism and Nationalism saw many leaders talk of regional cooperation and integration that would transform Africa into powerful political federation⁴. This process began regionally where attempts at regional integration were made. The East African Community (EAC) first came into existence in 1967 and was viewed as a success only comparable to the European Economic Community (EEC)⁵. However this establishment only lasted ten years and collapsed in 1977.

¹ G. Reginald and A. Seidman, *Unity or Poverty: The Economics of Pan Africanism* (Middlesex, Penguin, 1968) p 22

² P. Anyang' Nyong, "Regional Integration in Africa: An Unfinished Agenda", in Anyang' Nyong', P., (ed.) *Regional Integration in Africa: An Unfinished Agenda* (Nairobi, Academy Science Publishers, 1990) pp3-13

³ J. Nye, 'East African Economic Integration' in *Journal of Modern African Studies*, vol.1 No.4, Dec. 1961 p 475-502, see also I. Delupis, *The East African Community and Common Market* (London, Longman, 1970) p 157 and Hazlewood, A. *Economic Integration: The East African Experience* (London, Heinemann, 1975) p 172

⁴ P. Anyang' Nyong, Op.cit

⁵ J. Nye, Op.cit

The revival of the East African Community was an issue of shared concern for Kenya, Uganda and Tanzania who were members of an earlier outfit that collapsed in 1977. The pursuit of the convergent interests of the partner states' national interests is credited with its revival. It would be deemed that in a region that has a common heritage⁶ stemming from colonial masters, traditional trading routes, cultures and similar languages, the process of negotiations required would certainly be straightforward. However, their divergent interests were pursued concurrently which posed a challenge for the leaders⁷. In addition, the negotiating environment during the 1980s and 1990s had changed and was subject to many influences⁸. Hence, bilateral and multilateral protracted negotiations touching on both the convergent and divergent interests had to be held for a consensus to be reached, and integration of the region to become a reality.

Regional integration requires that the actions of partner states be brought into conformity with one another through negotiation so as to facilitate, modify and influence the belief systems, behaviour and images of others. If the negotiation is well coordinated, such that adverse consequences of any decision and their frequency are avoided, reduced, counterbalanced or outweighed it will result in cooperation and integration⁹. In this regard it is important to understand the nature and the context in which negotiation made an impact on the processes of regional negotiation. This study examines the process of negotiation that led to the revival of the East African Community during the period 1996-2004. It considers the negotiation process the determining factor in the regional integration.

⁶ T.M Shaw, "Regional Co-operation and Conflict in Africa" in *International Journal*, Vol. 30, No. 4, (Canadian International Council, Autumn, 1975), pp. 671-688

⁷ B.R Mngomezulu, "An Assessment of the Role Played by Political Leaders, Nationalism and Sub-nationalism in the Establishment and Collapse of the East African Community 1960 -1977" (Masters Dissertation, University of South Africa, 2006) p161 -162

⁸ R.G Winham, 'International Negotiation in an Age of Transition' in *International Journal*, Vol. 35, No. 1, (Canadian International Council, 1979/1980), pp. 1-20

⁹ R. Keohane, "Cooperation and International Regimes", in R. Little and M. Smith (eds.) *Perspectives on World Politics* 2nd ed. (London, Routledge, 1991) p102-114

1.1 STATEMENT OF THE PROBLEM

States and regions in the international system are judged by their perceived economic and political stability. The East African region as a whole has had a number of calamities ranging from internal conflicts to famines, poor political leadership and related adverse occurrences that have had a toll on its economy. To be able to arise from these unfortunate circumstances and compete on the global arena, the region attempted to integrate and became a customs union in 1967 but collapsed after only a decade. With globalization quickly changing the way in which states relate with each other economically and otherwise, the political leadership set out to revive the East African Community geared at becoming a political federation, as was the goal of the defunct bloc. Having had prior experience in integration and aware of the past failings that created huge gaps among them, the partner states opted for protracted negotiations for the revival of the community. These negotiations can be perceived as a chain of events that systematically led to an agreement that resulted in the establishment of the new East African Community whose treaty was signed in November 1999.

Generally, when states pursue regional integration, how they negotiate has a bearing on the outcome of the type of grouping formed, its function and purpose. The negotiation process for the revival of the East African Community began in the 1980s. 1984 saw a Mediation Agreement reached that divided assets and liabilities among the partner states. More negotiations would see a Tripartite Commission for the East African Cooperation established. This commission was later transformed into the institution that exists today. Regional integration is said to be successful if the resultant institution meets its objectives and fulfils the needs of its constituents. There are hopes that the new EAC will outlast the earlier one and as the partner states attempt to

make it into an organization that is acceptable to all, regardless of the fact that each state in the negotiation tries to protect his interests, as it pursues friendly relationships resulting from cooperation. The fact that some of the problems in the region remain the same makes the aspirations seem superficial, because, the old discord re-emerges in new guises. All in all, questions arise about the EAC's inclusiveness, stability and its capacity to cope with controversial issues that may arise. These are all determined by the negotiation process. A major issue that this study seeks to establish concerning the negotiation process is- are the negotiations being carried out in a sustainable way? This study seeks to show a link between negotiation and the successful integration of the EAC.

1.2 OBJECTIVES OF THE STUDY

The following are the objectives of the study.

- i. To find out the importance of the integration process in East Africa.
- ii. To analyze the negotiation process that led to the integration of East African Community.
- iii. To demonstrate that negotiation played an integral role in the integration of the new East African Community.

1.3 LITERATURE REVIEW

This study endeavours to examine the negotiation process for integration of East Africa by analyzing the formation of the East African Community. As such it will look at literature in two sub themes: Literature on international negotiation and case studies of negotiation for integration in the European Union (EU), and Caribbean Single Market Economy (CSME).

Literature on Negotiation

The United Nations charter¹⁰ in article 33:1 identifies negotiation as one of the tools of maintaining peace and security in the international system. The Vienna Convention on Diplomatic Relations¹¹ cites it as one of the core functions of diplomacy. Negotiation is deemed to be voluntary interaction between parties whose outcome is meant to meet needs and accomplish goals through reaching a mutual agreement. Berridge¹² describes it as, an art that consists of discussions between officially designated representatives, in order to achieve a formal agreement for their governments, on the way forward on an issue that is either of shared concern or in dispute between them. Consequently, negotiations are an integral part of how states relate to each other, be it in times of war or peace. In times of war, it is a useful tool in settling or resolving conflicts¹³. In times of peace, it is used to enhance international cooperation.¹⁴ Magalhaes¹⁵ uses the terms bilateral negotiation to describe a situation where two parties meet to negotiate and multilateral negotiation when several parties involved. Mwangi¹⁶ describes the different types of both bilateral and multilateral negotiations, into institutionalized and ad hoc where the former are pre-planned while the latter are held when and if issues arise. He also asserts that negotiations are held when there are common interests that people want preserved and should therefore be held on a regular basis. He talks of the structure of a negotiation¹⁷ being either dyadic, involving two parties in a conflict or cooperation arrangement or a 'more complex

¹⁰ United Nations Charter, Chapter 6 Article 33:1

¹¹ Vienna Convention on Diplomatic Relations

¹² G. Berridge, *Diplomacy: Theory and Practice* 2nd ed. (New York, Palgrave, 2002) p27

¹³ G.R Winham, "Negotiation as a Management Process", in *Journal of World Politics*, Vol. 30, No. 1 (Cambridge University Press, Oct., 1977), pp. 87-114

¹⁴ Ibid.

¹⁵ J. Magalhaes, *Pure Concept of Diplomacy* (New York, Greenwood Press, 1988) p111

¹⁶ M. Mwangi, *Diplomacy Documents Methods and Practices* (Nairobi, IDIS, 2004) p 67

¹⁷ M. Mwangi, *Conflict In Africa: Theory, Processes and Institutions Management* (Nairobi, CCR Publications 2006) p 113

multilateral one' which involves more than two parties where many countries come together to discuss issues of common interest.

Kremenjuk¹⁸ regards the process of international negotiation as a tool in bridging gaps between two parties with the hope of attaining some form of peace and justice, particularly in conflict situations. He claim that the process can be sustainable if it is viewed as inclusive and fair to all parties, and institutions put in place to oversee the implementation of the agreements. He talk of forward-looking negotiations that require the parties to institutionalize or formalize the implementation of the agreements to ensure fairness and transparency in the implementation as opposed to backward-looking agreements that are not formalized hence may not be sustainable.

In international relations, negotiation theory is concerned about the process of how states reach agreements in negotiation and why they reach the agreements they do, that is, the 'sequence of actions in which two or more governments address demands and proposals to each other for the ostensible purpose of reaching an agreement'¹⁹. These theories hold that negotiation is a psycho-social activity that involves humans hence several aspects of human behavior, activities and influences contribute to the whole process.

Generally, the process of negotiation is divided into three main phases that are central to its analysis. The phases are the pre-negotiation phase, a negotiation phase and the implementation phase²⁰. The pre-negotiation phase consists of building and keeping contacts and "talks about the talks", sometimes over years or even decades. The negotiation phase is when the parties are

¹⁸ V.A Kremenjuk, (ed.) *International Negotiation: Analysis, Approaches, Issues*, (Oxford, Jossey-Bass Publishers, 1991)

¹⁹ J.S Odell, *Writing Negotiating Trade: Developing Countries in the WTO and NAFTA*. (New York, Cambridge University Press, .2006) p.2

²⁰ M. Mwangi, Op.cit p70

actually sitting at the same table. The implementation phase is the where the parties attempt to enforce that which was agreed upon in the negotiation phase²¹.

Ikle²² is credited for bringing together concepts from economics and sociology into international relations literature with a view to analyzing diplomatic behavior and negotiation, thus making the study of international negotiations an eclectic absorption of insights from other disciplines. He came up with a negotiation theory that entails a two-stage process called a framework or detail.²³ The process begins with a confrontation of proposals, where parties seek a compromise that will establish a framework of broad objectives and principles to be followed. Then they draw out a number of detailed points of agreement. The next stage, the detail phase, permits the debate and 'packaging' of specific issues to construct a settlement acceptable to both sides. Other scholars who hold the same views are Bartos²⁴, Cross²⁵ and Hopmann and Smith.²⁶ However the approach has does not fully capture the essence of the negotiation process although it intuitively and experimentally corresponds to identifiable cases of negotiation²⁷. Similarly, the approach cannot overcome the problem of symmetry/asymmetry²⁸ on several levels. The findings of the convergence/concession approach are available to both parties. in addition, any advice on how best to bargain is equally accessible to all parties which could lead back to a stalemate that characterizes the situation ripe for negotiation.

²¹ Ibid

²² F. Ikle, *How Nations Negotiate* (New York, Harper, 1964) p 2

²³ Ibid p 25

²⁴ O. Bartos, 'Simple Model of Negotiation: A Sociological Point of View' in *Journal of Conflict Resolution* vol. 21 No.4 (MITT Press, 1977) pp565-579.

²⁵ J. Cross, *A Theory of Adaptive Economic Behaviour*. (Cambridge, Cambridge University Press. 1983)

²⁶ P.T Hopmann, and T.C.Smith, "An Application of a Richardson Process Model: Soviet-American Interactions in the Test Ban Negotiations", in *Journal of Conflict Resolution* (vol. 1962 No21 1977) pp 701-726

²⁷ Ibid. p109

²⁸ W. Zartman, 'Negotiation as a Joint Decision Making Process', in *Journal of Conflict Resolution*, Vol. 21 No.4 (Sage Publications Inc. Dec 1977) pp 619-638

Putnam²⁹ developed the two-level game theory in an attempt to explain the nature of international negotiation. He claimed that the negotiations will only be successful if they result in domestic benefits. This means that the domestic policy of a state informs its foreign policy and as a result how it negotiates in the international arena. Walton and McKersie³⁰ came up with a behavioral theory that views negotiation as a social process in which the two level game plays out. The theorists claim that negotiation is a two level power game where the negotiator deals with international (foreign negotiators) and domestic (his constituents) actors. Negotiations are made more productive by face to face interactions with members of each level. They further attempt to formulate an integrative theory of negotiation that incorporates aspects from the two levels that can be made more productive by having the adversaries interact face to face³¹, under conditions that emphasize their similarities.

Axelrod³² concurs with Putnam with regards to the two level game theory and further claims that in an iterated game, a player can use a strategy that relies on the information available so far to decide with each move, what choice to make. Since the players do not know when the game will end, they both have an incentive and an opportunity to develop cooperation based upon reciprocity. The shadow of the future provides the basis for cooperation, even among egoists³³. He then goes further to suggest that cooperation theory addresses empirical questions about the accuracy and dynamics of the predictions derived from game theory. Other factors that tend to support cooperation are relatedness of the players and internalization of social norms.

²⁹ R. Putnam, "Diplomacy and Domestic Politics: The Logic of Two-Level Games" in *Journal of International Organization*, Vol. 42, No. 3 (MIT Press, Summer, 1988), pp. 427-460

³⁰ R. Walton and R. McKersie, *A Behavioural theory of Labour Negotiations*, (New York, McGraw Hill, 1965) p3

³¹ S. Ting-Tooney, and M. Cole, "Intergroup Diplomatic Communication: A Face Negotiation Perspective" in Korzenny, F., Ting-Tooney, S., and S. Douglas - Ryan (eds.) *Communicating for Peace: Diplomacy and Negotiation*, (Newbury, Sage, 1990) pp77 -93

³² R. Axelrod, *The Evolution of Cooperation*. (USA: Basic Books 1984)

³³ R. Axelrod, "On Six Advances in Cooperation Theory", A Symposium paper prepared for a Special Issue of *Analyse & Kritik on The Evolution of Cooperation* at the School of Public Policy University of Michigan, (January 2000)

Gulliver³⁴ suggests a negotiation theory that is based on relationships which encompasses the fact that human beings perceive and relate with each other in terms of power, authority and trust, made meaningful in a cyclic overlapping sequence³⁵. He asserts that negotiation will be made meaningful in all the stages depending on the parties' ability to confront the situations at hand which are pegged on. Randolph³⁶ holds a similar opinion and suggests two aspects of negotiation as crucial to a successful outcome. These are the relationship among the elements in the phase of negotiation which are conducive to reaching an enforceable agreement and the elements in negotiation which are helpful in the enforcing the agreement both of the aspect are interrelated. The problem solving theory of negotiation is fronted by Kelman, et al³⁷, who suggest negotiation is a distinct way in which parties bring together representatives of different parties with conflicting stands or views in order to facilitate discussions in the hope of bringing them to a better understanding of the dimensions of the conflict and of helping them to develop joint strategies directed towards a mutually acceptable solution. These discussions serve as a preparation or supplement the actual negotiation. This theory has its roots in Burton's³⁸ functionalism theory whose basic tenet was to create a working system where all parties benefit from cooperation. Ironing out conflicts and misunderstandings through the problem-solving workshops would enhance cooperation and peace and bring about the type of society that Burton described.

³⁴ P.H Gulliver, *Disputes and Negotiations: Across-Cultural Perspective* (New York, Academic Press, 1979) p52

³⁵ *Ibid.* p 82

³⁶ L. Randolph, 'A Suggested Model of International Negotiation', in *Journal of Conflict Resolution*. Vol.10 No.3 (Sage Publication Inc., 1966)

³⁷ H. Kelman, H., Cohen, S., et al, 'Evolving Inter-group Techniques for Conflict Resolution: An Israeli- Palestinian Pilot Workshop,' in *Journal of Social Issues* 33(No 1, 1977) pp165-89

³⁸ J. Burton, *Conflict and Communication: Use of Controlled Communication in International Relations* (London, Macmillan, 1969) p 95

Linkage theory proponents Tollison and Willet³⁹ introduce an element of mutually advantageous issue linkages in negotiations, where parties try to extend their dominant veto power in one particular issue area into other areas in order to achieve a maximum advantage from their whole array of international interactions. They outline two factors that motivate parties into linkage; to extend their leverage in one area of negotiation to other areas and for mutual benefit, as a way to overcome obstacles in distributing gains among cooperating parties on the same side. Studies by Pruitt⁴⁰ and Salacuse⁴¹ show that when two organizations or parties hold negotiations, there are actually three linked negotiations, the external negotiation between the two sides and internal negotiations between each negotiation team and their respective side.

The convergence concession theory views negotiation as a learning process in which the parties react to each others' concession behavior. It is particularly attractive because it is flexible in terms of addressing the question of how best to negotiate and has come closest to grasping the nature of negotiation is process analysis.⁴² Zartman and Berman⁴³ delineate three phases, namely; diagnosis, formula and detail, in their discussion of this theory. During the diagnosis phase, parties affirm their need to change the current order of things, review the history of their relationship, and prepare their positions. In the formula phase, negotiators attempt to develop a shared perception or definition of the conflict that establishes terms of trade, or an applicable criterion of justice recognizing their existence, putting some aside for later consideration. Finally, the detail phase involves working out the specific elements of the agreement to make it consistent with the basic formula. The model implies that parties move from diagnosis to

³⁹ R.D Tollison and T.D Willet, 'An economic Theory of Mutually advantageous issue linkages in International Negotiations' in *Journal of International Organization*, Vol. 33, No. 4 (Cambridge Univ. Press, 1979) pp425-449

⁴⁰ D.G Pruitt, "Negotiation between organizations: A branching chain model". *Negotiation Journal* 1 No.3 (Sage, 1994) pp 217-230

⁴¹ J.W Salacuse, *The Global Negotiator*. (New York: Palgrave/Macmillan, 2003)

⁴² W. Zartman, 'Negotiation as a Joint Decision Making Process', in *Journal of Conflict Resolution*, Vol. 21 No.4 (Sage Publications Inc. Dec 1977) pp 619-638

⁴³ W.I Zartman and M. Berman. *The practical Negotiator* (Connecticut, Yale University Press, 1982) p. 95

formula to detail as lock-step phases, although it is important to note that actual negotiations, frequently fluctuate between these stages.

Basically, the negotiation process is influenced by the cumbersome nature of the complexity of multiple issues, human nature of negotiators that may change their assessment and choices during a negotiation and lack of adequate time to carefully consider available choices while participating in negotiation⁴⁴. In the world today, daily events surrounding international negotiations frequently impinge on the negotiation in unexpected ways⁴⁵.

In analyzing the negotiation process, scholars in this tradition relax some of the key assumptions of game theory that negotiation is zero-sum game where one player wins at the expense of another is transformed into a positive-sum game. Instead, it is viewed as a process whose outcome benefits all parties concerned⁴⁶. The assumption here is that all parties in the negotiations have a veto so they can choose to cooperate or defect from the negotiations⁴⁷.

These theories however suffer a setback in their inability to be sure that the other is going to cooperate, because one, decisions are made at the same time and two, the concessions offered by one side might not be returned. Secondly, no one theory can fully capture the dynamics and nature of the negotiation process, because the process begins way before the actual talks and end long after the talks have been concluded⁴⁸. Despite this, the study supports the two level game theory of negotiation as fronted by Putnam as it best describes and caters for the social and psychological dynamics that pertain to negotiation on two levels.

⁴⁴ P.H Gulliver, Op Cit

⁴⁵ F. Casmir, "International Negotiations: A Power - Trust Relationship", in Korzenny, F., Ting-Tooney, S. and S. Douglas - Ryan (eds.) *Communicating for Peace: Diplomacy and Negotiation*, (Newbury, Sage. 1990) Pp40-54

⁴⁶ W.I Zartman and M. Berman Op. cit p12

⁴⁷ H. Kuhn, 'Game Theory and Models of Negotiation', in *Journal of Conflict Resolution*, Vol. 6, No. 1, (Sage Publications, Inc., 1962) pp. 1-4

⁴⁸ Ibid

Case studies

a) Negotiation in the European Union

The European Union (EU) has been in existence since the 1950s. It has made gradual but considerable progress in managing the process of integration. This progress is partly based on its ability to bring into line the divergent interests of its member states. The main strategy used for this purpose has been the package approach⁴⁹, whereby negotiations include issues from different policy areas which are woven in to a package in order to satisfy the participants with different interests. In such a policy package, issues of a great interest for every single member will receive something as the price for its cooperation. It has several principles that it strictly adheres to and this maintains its credibility and facilitates decision making that helps to overcome stagnation leading to enhanced cooperation⁵⁰. As such, the membership of the Union has gradually increased over the years to the current eighteen.

The European Union has a Council that is the most influential and powerful decision-making institution of the organization. It is made up of the heads of state and government and is mandated to hold negotiations and reach agreements in all matters concerning the Union. Since the 1970s it has tackled the threat of a potential crisis in European top-level negotiation that was brought about by the process of expanding policy areas of the institution and the enlargement of European integration. Out of this, two parallel processes of reform⁵¹ have carried out. The first deals with the operational settings of the European Council negotiations, the second with the

⁴⁹ P., Van Grinsven, "European Council Negotiations" in *PIN Point Newsletter* Vol. 3 June 2005

⁵⁰ M. Albert, "Governance and Democracy in European Systems: On Systems Theory and European Integration" in *Review of International Studies*, Vol. 28, No. 2 (Cambridge University Press Apr., 2002), pp. 293-309

⁵¹ P. Taylor, "Concepts of Community and the European Process", in *Journal of Common Market Studies*, Vol.2 No.2 p83-101

institutional structure and the balance of power between the EU institutions. Currently, the Council has twenty delegates per member state involved in European Council negotiations.

EU history shows that difficult issues cannot be resolved within a single seating so a series of negotiations is required which is often interlinked and complex. This expands the scope of the negotiations and intensifies the contacts between the parties involved, thus, facilitating the possibility of the necessary creation of consensual negotiations.

Over the years, the European Council has had various kinds of international negotiations come into existence. There are normal meetings that are held quarterly and extraordinary meetings that are held when issues arise for example the terror attack on America in 2001 or the war in Iraq in 2003. Informal negotiations are also held. Here, no official notes, conclusions, or decisions are published, such as the first informal European Council summit in September 1995 on the ongoing proceedings of the Intergovernmental Conference. These different kinds of negotiations coincide with the ever-expanding agenda of the European Council⁵². The Nice negotiations⁵³ in 2000 saw preliminary steps laid down to make the European Council a powerful institution with its own permanent president, diplomatic staff and secretariat. It was also resolved that the Council meetings were to be held in Brussels. These moves have enabled the European Council to strengthen its position⁵⁴ within the EU and consolidate its negotiations making them more effective and efficient.

All in all, the EU's international negotiation is becoming more and more institutionalized. Decisions are no longer just a way to reach the ultimate goal of getting to an agreement but have become an autonomous part of the decision-making process.

⁵²J., Tallberg, "Bargaining Power in the European Council" in *Journal of Common Market Studies* Vol. 46 No. 3 (Blackwell, 2008) pp. 685–708

⁵³ Article 22 of the Declarations adopted by the EU Council Conference Nice, 2005

⁵⁴ J. Schalk, R. Torenvlied, et al 'The Power of the Presidency in EU Council Decision-Making' in *European Union Politics*, Vol. 8, No. 2(Cambridge university Press, 2007) pp. 229–50

b) Negotiation in the Caribbean

The Caribbean region comprises states that have a long winding history of over four hundred years of cooperation. The current regional integration is known as the Caribbean Single Market Economy (CSME) in 2005 formed out of the Caribbean Free Trade Area (CARIFTA) of 1968 and the Caribbean Common Market (CARICOM) of 1973. Fifteen Caribbean states that over the years, have incorporated into their structure and functioning certain systematic features which bear directly on their capacity to achieve a CSME⁵⁵.

The transition from CARIFTA to CSME was motivated by the need 'to deepen the integration process and strengthen Caribbean Community in all of its dimensions to respond to the challenges and opportunities presented by changes in the global economy'⁵⁶. This would enable the region to have more economic and political strength and better prospects, within such a framework, than they would have if they faced the global economy individually and provide a sound basis on which the region could interface with the rest of the world, given the changing global environment in which countries are now required to operate which would lead to greater efficiency for the benefit of the region.

Negotiations in the traditional model structure would take place in highly formal, official negotiating sessions among Heads of Government and suitable diplomats and government officials⁵⁷ or through government-to-government communications via special representatives at the negotiation table. The respective member state governments would provide their representatives with very specific instructions prior to the official negotiation sessions, and the

⁵⁵ L.M Harewood, *"The Caribbean Negotiation Process: A Comparison of the Different Models of Negotiations used in the Development and Implementation of CARICOM and the Caribbean Single Market and Economy"* (Masters dissertation September 2005) pp 11-22

⁵⁶ Ibid

⁵⁷ Ibid

process which would ensue would be generally one of bargaining of exchange of concessions, focusing on immediate short-term results. It would be anticipated that at the end of these sessions the participants would have left with a binding agreement. The traditional view of negotiations has usually been an array of loosely tied autonomous situations in which sovereign partners meet to find a joint and mutually acceptable solution⁵⁸.

Today, the negotiation practice is not solely a matter government with the increased interdependence within the Caribbean region there has been a shift from traditional models of negotiation to alternative approaches characterized by greater informality and a longer time perspective. It involves a plethora of actors that includes technical experts, responsible diplomats and representatives of other agencies. This model would allow relatively lengthy periods of consultations at the level of experts, and is followed by an agreement in principle at a very high level, therefore promoting the implementation of the legality of the documents within a short period of time⁵⁹. However there is no evidence that they have become more effective.

In summary, the negotiation process in CSME incorporates aspects of both the traditional approach and the alternative model of negotiation. Both approaches have their flaws have their flaws, but when used together, provide a forum through which negotiation is made possible and joint problem solving, brainstorming and agreements are reached.

1.4 THEORETICAL FRAMEWORK

The study will be guided by cooperation theory as fronted by Axelrod⁶⁰ in its analysis of the process of negotiation for the integration of the East African Community. The claim in the theory is that cooperation can be achieved through an iterated process of negotiation and

⁵⁸ Ibid

⁵⁹ Ibid

⁶⁰ R. Axelrod, Op. cit

renegotiation, which continues beyond initial agreements and result in complex and enduring governance orders and potential social change.⁶¹ During negotiation for integration, there are a set of actors or players each of whom has a set of choices. Any choice made influences the outcome of the negotiations and subsequently the payoff received jointly by all the players⁶². There must also be both individual and collective rationality among states in the negotiations⁶³ leading to integration. Individual rationality is necessary in an anarchic international system while collective rationality requires countries cooperate explicitly in order to negotiate and renegotiate their treaties and agreements at any time. When combined, these requirements give the cooperation theory great impetus⁶⁴.

Putnam⁶⁵ asserts that the dynamic process of international negotiation and its outcome is a result of patterned exchanges at two levels, between the negotiators and their constituents (Level I) and among the negotiators themselves on the world stage (Level II). There has to be cooperation between the two levels if the desired win-win outcome⁶⁶ is to be achieved. These negotiations will be influenced by several antecedent and existing conditions and factors that in turn influence the outcome of the whole process in varying degrees, such that similar negotiations would elicit different outcomes or different domestic orientations reach similar outcomes. States seek to cooperate with each other in order to harmonize their interests, compromise their differences and reap rewards such as economic, political and social integration from their interactions. For

⁶¹ Ibid

⁶² S.D VanDeveer, "Actors, Norms, and Impact: Recent International Cooperation Theory and the Influence of the Agent-Structure Debate", in *Annual Review of Political Science* Vol. 7, 2004 pp149-175

⁶³ S. Barrett, *A Theory of International Cooperation*, (London Business school, Mimeo 1998) p 3-4

⁶⁴ R. Axelrod, and R.O. Keohane, "Achieving Cooperation Under Anarchy: Strategies and Institutions," in *Journal of World Politics*, (Sage, 1985) pp 226-254

⁶⁵ R.D Putnam, Op.cit pp 427-60

⁶⁶ Ibid

international integration to take place there has to be functional cooperation⁶⁷ among states that will create new relationships that bring about international institutions that transcend the traditional interests of diplomacy of the nation states⁶⁸. This is dependent on whether or not the negotiation process was cooperative.

1.5 JUSTIFICATION OF THE STUDY

International integration is a dynamic process involving emerging community ties and relationships among the sovereign states⁶⁹ whose major role in international politics is to act as an instrument of achieving national policies and to modify state behavior since the resultant body is an autonomous international actor in the international system⁷⁰. Theorists like Haas⁷¹, Lindberg⁷², Deutsch⁷³, Panchala⁷⁴, and Nye⁷⁵ maintain that regional integration is stimulated by the effects of the globalization process because few societies are able to remain undisturbed by

⁶⁷ C. Kegley, and G. Raymond, *The Global Future: A Brief Introduction to World Politics* (London, Thomson-Wadsworth, 2005) p246

⁶⁸ R. Harrison, *Europe in Question: Theories of Regional International Integration*. (London George Aleeb and Unwin Ltd., 1974) p9

⁶⁹ C. Kegley, C., and G. Raymond, Op. cit p246

⁷⁰ J. Renaud, "International Organizations and Integration Theory", in F. Korzeny, S. Ting-Tooney, and S. Douglas – Ryan (eds.) *Communicating for Peace: Diplomacy and Negotiation*, (Newbury, Sage, 1990) pp 176-195

⁷¹ E. Haas, *The Uniting of Europe: Political, Social and Economic Forces* (California, Stanford University Press, 1958) p16 defines regional integration as a shifting of certain national activities toward a new centre.

⁷² L. N Lindberg, 'Political Integration as a Multidimensional Phenomenon Requiring Multivariate Measurement', in L. N Lindeberg, L. N., (ed.) *Regional Integration: Theory and Research*, (Cambridge, Harvard University Press, 1970) p46 proposes that it is an evolution over time of a collective decision making system among nations. If the collective arena becomes the focus of certain kinds of decision making activity, national actors will in that measure be constrained from independent action.

⁷³ K. Deutsch, *Resolution of Conflict* (New Haven, Yale University Press 1958) p105 defines integration as the attainment of institutions and practices that are strong enough and widespread enough to assure dependable expectations of peaceful change among its population

⁷⁴ D. Panchala, "Of Blind Men, Elephants and International Integration" in *Journal of Common Market Structures* Vol.10 No. 3 (Blackwell, 1972) p 257 says it is a set of processes that produce a concordance system at the international level where actors find it possible to consistently harmonize their interests, compromise their differences and reap rewards from their interactions.

⁷⁵ J. Nye, *Peace in Parts: Integration and Conflict in Regional Organizations* (Boston, Little, Brown and Co. Inc, 1971) p 2 refers to regional integration as formal agreements among governments and diplomatic forums to allow for functional cooperation.

the technological revolution on the world distribution of wealth, military power and relative political power, so they form or join regionally integrated bodies to cope with the new system.

Feng and Genna⁷⁶ argue that regional integration is best achieved when member countries are able to reduce the variance and heterogeneity of their economic institutions, which requires the actions of separate states to be brought in conformity with one another through a process of negotiation that allows state actors to adjust their behavior to the actual or anticipated preference of others. Through negotiation the European Union (EU) for example has been able to bring its member countries together in a fairly cohesive political and economic unit. The states in the East African region hope to unite their resources so as to achieve a similar fete. This is possible if they are able to hold negotiations in order to increase trade, investment and production by the elimination of economic frontiers⁷⁷ and link together their economies to raise standards of living, and move towards a political federation⁷⁸.

The importance of negotiation in integration therefore cannot be understated. If they are hurriedly arrived at, partisan or coercion used to achieve a particular end, then the resultant body may not last long enough to see any of its members benefit. Currently, neither the nature nor the potential of the negotiation process for regional integration is adequately understood because insufficient effort has been devoted to the analysis and study of the process⁷⁹. Hence, to enhance our understanding of the potential utility and dynamics of the process, a case study of the phases and dynamics of negotiation process for the revival of the East African Community is used. This is because, despite its wide usage in international relations, its variety, longevity, and seeming

⁷⁶Y. Feng, and G. Genna, "Regional Integration and Domestic Institutional Homogeneity: A Comparative Analysis of Regional Integration in the Americas, Pacific Asia and Western Europe" in *Review of International Political Economy* Vol. 10, No. 2 (Taylor & Francis, Ltd., May, 2003) pp. 278-309

⁷⁷J. Nye, Op.cit

⁷⁸Ibid. p475

⁷⁹S. Balakrishnan, and J. Eliashberg "An Analytical Process Model of Two-Party Negotiations" in *Journal of Management Science*, Vol. 41, No. 2 (INFORMS, Feb., 1995), pp. 226-243

ubiquity, negotiation for regional integration remains understudied, and unrefined. There has been a call to investigate the negotiation process⁸⁰, with the hope of uncovering new and a variety of important insights. In addition, we know very little about the conditions under which negotiation is effective.

The study considers negotiation as an integral part of regional integration in that it enables the member states to fulfill their common interests through cooperation. It focuses on the negotiation process to critique whether or not the negotiation for the integration of the East African Community was effective enough to allow the bloc to remain united for the long haul, and not a temporary agreement that would allow for a second disintegration. In this respect, the nature and process of negotiation will be analyzed.

1.6 HYPOTHESIS

The study will be guided by the following hypotheses:

- i. Regional integration is necessary for the East African region.
- ii. A comprehensive and inclusive negotiation process led to the integration of the new East African Community.
- iii. The integration of the East African Community is entirely dependent on the negotiations among partner states.

1.7 METHODOLOGY

a) Research design

⁸⁰Ibid

The study employs the case study type of research design, which entails the detailed and intensive analysis of a single case,⁸¹ in relation to how well the data collected supports the theoretical arguments that are anticipated, by investigating the nature and complexity of the case in question. A case is commonly associated with a location, such as a community or organization. The emphasis in a case study tends to be upon the intensive examination of the setting.⁸² The East African Community is the selected case because it allows for a better understanding of the circumstances that the clearly specified study hypotheses are held true. This particular bloc is an exemplifying case because it provided a suitable context for research questions to be answered.

b) Sampling Design

In the collection of primary data, purposive sampling/deliberate sampling will be used. This kind of non-probability sampling involves purposive or deliberate selection of particular units of the universe for constituting a sample that represents the universe.⁸¹ It has been selected because the probability of including population elements is unknown. Specifically, the study will use convenience sampling because population elements will be selected for inclusion in the sample based on the availability of the respondents. Through convenience sampling, it will be possible to get a better understanding of the relationships that may exist between the participants of the negotiation talks. Convenience sampling is advantageous because it allows for selection of respondents who are available. However, it suffers a drawback where it may give biased results

⁸¹ A. Bryman, *Social Research Methods*, 2nd ed., (New York: Oxford University Press, 2004) p48

⁸² Ibid. p 49

⁸¹ C.R Kothari, *Research Methodology: Methods and Techniques*, 2nd ed. (New Delhi: New Age International Publishers, 2004) p 15

particularly when the population is not homogenous.⁸⁴ As such there is need to have a wider population in the sample to cater for the bias, which will be dictated by availability of time and resources.

c) Methods of data collection

Three research instruments will be used for data collection in this study. Most of the primary data will be collected from archival reports and other documents emanating from seminars, meetings and workshops about the East African Community available at the East African Community headquarters in Arusha, and the library at the Ministry of East African Community in Nairobi, publications of governments and international organizations. The other instrument will be structured interviews, since the respondents were involved in one way or the other and at any stage of the negotiation talks held among the partner states, the open ended questions provide high levels of flexibility. With little direction from the interviewer, the respondents will be encouraged to relate their experiences, to describe whatever events seem significant to them, to provide their own definitions of their situations, and reveal their opinions and attitudes. This will allow respondents from the three partner states to give their own views without limitations or obstructions by the interviewer. This kind of data collection method also allows the interviewer a great deal of freedom to control the interview situation and to probe various areas and to raise specific queries during the course of the interview.⁸⁵

Data collection will include an analysis of secondary data that had already been collected and analyzed by other researchers then stored in libraries or archives. It will involve analysis of

⁸⁴ Ibid. p15

⁸⁵ C. Frankfort-Nachmias and D. Nachmias, *Research Methods in the Social Sciences*, 5th ed. (London, Arnold, 1996) p 235

various journals including online journals; books; and reports and projects prepared by research scholars available on the subject. Secondary data analysis has the advantage of saving the researcher from being confronted with the problems that are associated with collection of original/primary data like extensive traveling and field risks. Moreover, secondary data is readily and cheaply accessible in the libraries and archives⁸⁶.

d) Data processing and analysis

The raw data collected will first be edited. The process of editing entails examination of the collected raw data to detect errors and omissions and to make corrections where possible. Editing will ensure that the data is accurate, consistent with other facts gathered, uniformly entered, as complete as possible and well arranged to facilitate analysis.⁸⁷ The data collected will be analyzed by a quick impressionist summary.⁸⁸ This will include coding the data and organizing it into concepts and themes from which a generalization about the negotiation for the revival of the East African Community will be made. A narrative report of the key issues of the discussions enriched with quotations from the respondents will then be written with the intention of coming up with a grounded theory⁸⁹. All the information gathered will be examined in relation to the hypothesis of the study to see if the hypothesis are confirmed or not.

⁸⁶ D. Kombo and D. Tromp. *Proposals and Thesis Writing An Introduction* (Nairobi, Pauline's Publications Africa, 2006) p101

⁸⁷ C.R Kothari, *Op.cit* p122

⁸⁸ D. Kombo and D. Tromp *Op.cit* p118

⁸⁹ O. Mugenda and A. Mugenda, A., *Research Methods: Quantitative and Qualitative Approaches*. (Nairobi, ACTS Press, 1999) p 205

1.8 CHAPTER OUTLINE

Chapter one introduces the topic of the research study. It sets the broad context of the study, the statement of the problem, justification, theoretical framework, literature review, hypotheses and methodology of the study. Chapter two will focus on the integration of the East African Community, from colonial times to present day. Chapter three explores the theory of negotiation by looking at the successive stages in the negotiation process. Chapter four presents a critical analysis of the negotiation for the integration of the East African Community in the period 1996-2004. Lastly, chapter five will indicate the findings of the research based on the hypothesis and give its conclusion.

CHAPTER 2: THE INTEGRATION OF THE EAST AFRICAN COMMUNITY

INTRODUCTION

Nye¹ refers to regional integration as formal agreements among governments and diplomatic forums to allow for functional cooperation. It is best achieved when member countries are able to reduce the variance and heterogeneity of their economic institutions². As a form of collective action among countries it is a means through which states can obtain certain goals and developments in international politics that show transcend the traditional interests of diplomacy of the nation states towards realizing those of a rudimentary international community of which they are a part³.

Regional integration in Africa is dogged by contradictions stemming from the absence of a clear consensus on the benefits of integration, the lack of political will necessary to make it work, vested interests, and a proliferation of a variety of groupings with multiple memberships⁴. It is however set against the backdrop of the European example, the European Union (EU) which has proven to be a vehicle for peaceful channeling and bypassing national antagonisms and thus earned its place as one of the most remarkable developments in the area of international integration relationships⁵.

Regionalism as a theory of international integration is a formal process of intergovernmental collaboration between two or more states. It is the tendency towards some form of preferential

¹ J. Nye, *Peace in Parts: Integration and Conflict in Regional Organizations* (Boston, Little, Brown and Co. Inc, 1971) p 2

² Y. Feng and G. Genna, Regional Integration and Domestic Institutional Homogeneity: A Comparative Analysis of Regional Integration in the Americas, Pacific Asia and Western Europe in *Review of International Political Economy* Vol. 10, No. 2 (Taylor & Francis, Ltd., May, 2003), pp. 278-309

³ Harrison, R., *Europe in Question: Theories of Regional International Integration*. (London George Aleeb & Unwin Ltd., 1974) p9

⁴ N. Ndung'u. *Regional Integration Experience in East Africa* (Nairobi, African Economic Research Consortium, 2003) p 52

⁵ H. Kohr, *The Breakdown of Nations* (London, Routledge & Kegan Paul, 1957) pp170 -216

trade arrangement between groups of countries belonging possibly to a particular social region⁶ created by the members who define their boundaries. States that are in geographical proximity and have common cultures and ways of life usually form regional groupings. The new East African Community is an organization created by countries in the East African region, for the purposes of creating a political federation through functional strategy of a gradualist, building block approach⁷.

This chapter is made up of four parts that discuss the integration of the East African Community. The first is a historical account of the Community. It also discusses and the organs of integration in the new East African Community. The second highlights the major incidences surrounding the revival of the community and highlights the views of some scholars about the revival of the community while the third discusses the contribution made by civil society organizations in the integration process. The chapter ends with a proposal of the ideal set up for effective integration of the revived East African Community.

1. Background of the East African Community

The integration process in East Africa was a pragmatic response to administrative and communication needs that began in the colonial era⁸. During this period, British politicians had specific aims in mind for proposing that the three East African countries be integrated. To a large extent, they promoted it mainly for economic and administrative purposes so as to facilitate easy administration in the region and ensure that the economies of these countries were linked. The

⁶ S. Lahiri, "Controversy: Regionalism versus Multilateralism" in *the Economic Journal*, No. 108 (Blackwell, 1998) pp 1126-1127

⁷ P. Anyang'-Nyong'o, "Regional Integration in Africa: An Unfinished agenda," in Anyang' Nyong'o A. P., (ed.) *Regional Integration in Africa; Unfinished Agenda* (Nairobi, Academy Science Publishers, 1990) pp1-13

⁸ F.P McLoughlin, "East African Economic Development over the Next Twenty Years: Some Forecasts about Qualitative Changes" in *Canadian Journal of African Studies* Vol. 5, No. 2 (Canadian Association of African Studies, Spring, 1971), pp. 227-240

East African leadership believed that integration was the best means through which they could get rid of Britain and run their own affairs as East Africans. Although the main factor was politics, the economic factor also played a pivotal role in that the East African leadership wanted to consolidate their regional economies so that they could compete better in the international market while at the same time making Britain dispensable⁹.

Shaw¹⁰ asserts that the cooperation and subsequent integration of the three East African states was possible because they share a common heritage. Since the pre-colonial era, the communities in these three countries have interacted economically through trade, socially and culturally. The common language spoken in the region- Kiswahili – informed the cooperation. It was therefore easy for the British to introduce English as the business language¹¹. Ford¹² says that this linguistic harmonization was good for the cooperation. In addition, all three countries were part of the same pre-colonial network that stretched from the Indian Ocean to the eastern third of the Congo Basin, so that long distance, cross-border trade in the region is well established.

The first attempts at East African cooperation began with the construction of the Kenya –Uganda railway in 1817. In 1917, there was an attempt at creating a Customs Union between Kenya and Uganda. Tanzania joined them in 1927¹³. The customs union was fairly successful, as the three territories came up with a common external customs tariff and harmonized their trade policies as early as 1919¹⁴ which provided for a common excise tariff, and free movement of goods, capital

⁹ B.R Mngomezulu, “An Assessment of the Role Played by Political Leaders, Nationalism and Sub-nationalism in the Establishment and Collapse of the East African Community 1960 -1977” (Masters Dissertation, University of South Africa, 2006) p161 -162

¹⁰ T.M Shaw, “Regional Co-operation and Conflict in Africa” in *International Journal*, Vol. 30, No. 4, (Canadian International Council , Autumn, 1975), pp. 671-688

¹¹ N. Ford, “Doubts over East African Integration”, in *Africa Business* August, 1 2005

¹² Ibid

¹³ J. Nye, “East African Economic Integration” in *Journal of Modern African Studies*, vol.1 No.4, Dec. 1961 p475-502

¹⁴ P. Sebalu, “The East African Community” in *Journal of African Law*, Vol. 16, No. 3 (Cambridge University Press. 1972), pp. 345-363

and labor. The period 1920-1930 saw the greatest growth in the East African market despite criticisms¹⁵ about this arrangement. Cooperation was enhanced by the establishment of the East African High Commission (1947 -1960) amid the approach of independence with its increased territorial consciousness and responsibility.

In 1958, the Ugandan government was disgruntled over Kenya's gains from trade and proposed a system of fiscal compensation for loss of duty on imports from Kenya. The colonial office tried to quell the disgruntled voices by appointing the Raisman Commission, which sat during 1960-1 that proposed a common market that benefited the whole East African region be formed¹⁶. The result was the formation of the East African Common Services Organization (EACSO) which existed from 1961 – 1967¹⁷. The British colonists enhanced their interaction by introducing similar legal and regulatory traditions and allowed for cross-border cooperation in many areas: East African Railway Services, East African Currency Board, a joint East African Income Tax Board, a joint Economic Council, East African High Commission and the East African Common Services Organization¹⁸.

After independence, the East African leaders at the time, Presidents Kenyatta, Nyerere and Obote of Kenya, Tanzania and Uganda respectively, recognized the necessity to integrate the three East African countries into a single sovereign functional entity¹⁹. Personal relationships among the East African leaders within and between territories played a huge role in the formation of the EAC. At the forefront was the relationship among the three Heads of State whose good relations at the time fast-tracked the successful establishment of the EAC. The

¹⁵ J. Nye, Op cit.

¹⁶ Proceedings of the E.A. High Commission, 29th Meeting, 26 November 1959.

¹⁷ Ibid.

¹⁸ N. Ndung'u, "Regional Experience in East Africa" in Goldstein, A., and N. Ndung'u, *Regional Integration Experience in the East Africa* (Paris: OECD Development Centre, March 2001) pp46-61

¹⁹ B.R Mngomezulu, Op.cit.

relationship between President Karume of Zanzibar and President Nyerere of Tanganyika made it possible for Zanzibar and Tanzania to unite in April 1964 to become Tanzania. The good working relationship between Kenyan leader like Thomas Mboya and President Nyerere also facilitated the process of establishment of the EAC.²⁰

In 1966 the Heads of State of the three partner states appointed and mandated a commission to come up with a draft treaty detailing new system of regional integration, different from the one instituted by the colonial government, under the chairmanship of Professor Kjeld Phillip²¹. Subsequently, the treaty was completed and signed on 6th June 1967. By signing this treaty the partners committed themselves to a legally sanctioned transnational community²².

The main objective of the EAC is spelled out in paragraph one chapter 2, of its treaty²³ was to strengthen and regulate the industrial, commercial and other relations of the partner states, to the end that there shall be accelerated harmonious and balanced development and sustained expansion of economic activities, the benefits whereof shall be equitably shared. At the helm of the EAC organizational structure was the Summit of heads of states. The EAC policy was governed by the East African Authority. Each partner state appointed a minister for East African Affairs who served in an advisory role to the EAC²⁴. It had five other councils namely, the Common Market Council, the Communications Council, Economic, Consultative and Planning Council, the Finance Council and the Research and Social Council. Other institutions included the East African Legislative Assembly, Common Market Tribunal and a Court of Appeal²⁵. In its lifetime the EAC created five institutions; East African Railway Corporation, East African

²⁰ B.R Mngomezulu, Op.cit p 165

²¹ S.A Gitelson, "Can the U.N. Be an Effective Catalyst for Regional Integration? The Case of the East African Community" in *Journal of Developing Areas*, Vol. 8, No. 1 (Tennessee State University, Oct., 1973), pp 65-82

²² Ibid.

²³ EAC, Treaty Establishing the East African Cooperation (Nairobi, Government Printer, 1967) p1

²⁴ EAC, Op.cit

²⁵ Ibid

Development Bank, East African Harbours Corporation, East African Airways and East African Posts and Telecommunications Corporation²⁶.

The EAC treaty called for regulations covering intra-community trade and controlled trade with non member states. Non members were subjected a common internal trade tariff²⁷. Most cooperation and success was registered in the economic field during the lifespan of the defunct EAC. It was an avenue through which the partner states would create a stable market through mutual cooperation and regulated development and trade²⁸. All members were to receive an equal share of the gains of the community²⁹. However, negligible progress was realized in the political, legal and socio-cultural field. Politically, there were wrangles among the leaders as each partner state embraced a different ideology. Kenya leaned towards capitalism, Tanzania towards socialism while Uganda embraced a mixture of the two ideologies³⁰. The lack of legal basis upon which any cooperation could be based was the major setback in the legal arena³¹. A combination of all these issues exerted pressure that the structure of the community could not hold, hence its eminent collapse.

The EAC lasted only ten years and collapsed in 1977. Several scholars have come up with reasons as to why it collapsed. These include Umbrecht³² Potholm³³, Gitelson³⁴, McLaughlin³⁵,

²⁶ Ibid.

²⁷ N. Ndung'u, Op.cit

²⁸ J. Oloka-Onyango, "Who Owns the East African Community?" *A Presentation on the East African Community*, (Kampala, DENVIA 2005)

²⁹ Ibid

³⁰ G. K Adar, "Federalism and East African Community Integration Process: The Role of the East African Legislative Assembly" (Pretoria, AISA, 2008)

³¹ Ibid

³² V.H Umbrecht, *Multilateral Mediation: Practical Experiences and Lessons* (Doerdrecht, Martinuss Nijhoff, 1988)

³³ C. P Potholm "Who Killed Cock Robin? Perceptions Concerning the Breakup of the EAC" in *World Affairs* Vol. 142 No. 1 1979 pp45-56

³⁴ S. A Gitelson, Op.cit

³⁵ L. McLaughlin Op.cit

Hazlewood³⁶ and Adar³⁷. The East African Community structure saw power being centralized within the East African Authority that was the policy making body, and by implication it undermined operational functions of the other structures. This is because decisions were made at this high level of authority without adequate consultation from the grassroots. Mutere³⁸ asserts that the composition of the supreme decision making body, the East African Authority made up of the three heads of states increased the danger of transforming personal rivalries into a more lasting inter-state conflict. When the strategies for integration were laid down in 1967 the East African leaders did not abandon the structures they had inherited from colonialism, instead they added a few more elements to them. They hoped that this would correct the economic disequilibrium in trade between the countries. According to Hazlewood³⁹ the leaders thought that by putting in place a series of financial and administrative structures they would effectively regulate the functioning of the common market services. These structures did not aid the process as the leaders had anticipated. Eventually, the East African Community collapsed in 1977.

The community was vulnerable to political instability after gaining independence which resulted to poor governance⁴⁰ because the leaders had weak authority. The critical failure of the political leadership was elicited when they were all dealing with internal problems and failed to focus on the wider regions issues and integration of the region. The high ranking technocrats who were the decision makers of the bloc sought fame and favor locally so they tended to ignore or put off

³⁶ A. Hazlewood, "The End of The East African Community: what are the Lessons for Regional Integration Schemes?" in *Journal of Common Market Studies* Vol.28 No. 1979

³⁷ G.K Adar, Op. cit

³⁸ A. Mutere, "Mediating and Keeping Peace" in *Southern African Political and Economic Monthly*, Vol. 9, No.7 1996 p.8

³⁹ D. Hazlewood, "Economic Integration: Lessons Learned for African Recovery and Development, in" A. Adedeji, et.al(eds.) *The Challenge of African Economic Recovery and Development* (London, Frank Cass, 1992) pp

⁴⁰ G.K Adar, Op.cit

regional matters which took a back seat. As a result, the common services such as education, health and trade began to fail⁴¹.

The personalities of the leaders at the time clashed and this hurt any efforts of remaining integrated. More specifically, the differences between Nyerere of Tanzania and Amin of Uganda because of Amin's dictatorship shook the very foundation of the community⁴² particularly when Tanzania was allegedly involved in the coup that overthrew Amin from power following a series of disagreements between the leaders of the two states⁴³.

The different level of economic development among member states was a thorny issue with Tanzania being unhappy of Kenya's dominance within the region. Economic realities in the region could not be denied. Kenya was better placed economically than the other two countries since the colonial times. It therefore used its advantage to gain more from the regional common services and benefits from trade which made Uganda and Tanzania disgruntled. They cried foul over the uneven distribution of benefits of the integration and loss of tariff revenue which they claimed benefitted Kenyan manufacturers. Kenya was aided by her ideology which made her citizens more aggressive and competitive in business and other economic activities. Tanzania on the other hand subscribed to socialism that did little to encourage competition. Uganda had internal conflicts every now and again and as a result, it was difficult for investors, both foreign and local to invest in the country. The rising costs of energy and imported and finished goods occasioned by severe balance of payment deficits dealt a huge blow to trade within the region

⁴¹D. Hazlewood, Op.cit

⁴²L. Kasekende and N.K. 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 Liberalization in Sub-Saharan Africa: Framework, Issues and Methodological Perspectives* (Macmillan Press Ltd, London. 2000)

⁴³ Ibid

causing it to decline rapidly. This made the countries focus more on nationalistic goals as opposed to economic integration efforts hence creating rifts in the community⁴⁴.

There was lack of political will among East Africa leaders who were conferred with the responsibility to steer the community to a functioning entity. Instead nationalistic goals overshadowed economic integration efforts. By June 1977 the states could not agree on the EAC budget for the coming fiscal year. The result of this was that the EAC ceased to function.

The three states subscribed to three different ideologies and this was a recipe for disaster as each was loyal to different groups during the cold war and received aid from different regions some of whom were inaccessible to others because of the allegiance to their respective ideology. Kenya embraced capitalism, Tanzania socialism (Ujamaa) while Uganda embraced both ideologies thus causing disagreements.

There were other exogenous forces that saw the community disintegrate. Neocolonialism was one of these forces where the great powers of the day America, Britain and some multinational corporations influences the partner states either to support them and /or other states outside the community, failure to which they would change how they interacted with them. An example is America's support of Somalia in its conflict with Ethiopia was seen to jeopardize Kenya's interests⁴⁵. Another force was the fact that there were a series of internal conflicts in Africa at the time, like the Nigerian civil war, the battle for Ogaden, and the overthrowing of Kwame Nkrumah which brought about a feeling that the East African Community may soon collapse⁴⁶.

The collapse provides four useful lessons for the future according to Ndung'u⁴⁷. He claims that for economic integration to succeed there has to be political goodwill by each partner state.

⁴⁴ G.K Adar, Op.cit

⁴⁵ C.P Potholm. Op.cit

⁴⁶ Ibid

⁴⁷ N. Ndung'u, Op.cit

Secondly, acceptable compensation mechanisms should be designed by members to avoid suspicions of one benefitting over others. Thirdly, for full integration to be realized in the region, an efficient infrastructure that allows for speedy movement of goods and people at reasonable costs is essential. Lastly, a compatible system of domestic policies and economic management is critical for convergence in key macroeconomic prices.

2. Revival of the community

Adar⁴⁸ suggests that the econo-political forces that led to the collapse of the EAC in 1977, were centered on structural and systemic factors, which still lingered in the minds of the leaders for the most of the 1980s and 1990s. Therefore, for future integration of the region, the states had to devise effective negotiation strategies through which negotiations would be held for any meaningful integration of the region.

After the collapse of the initial integration arrangement, representatives of the three partner states met in 1984 to negotiate for the division of the assets and liabilities acquired⁴⁹. Out of this meeting came a Mediation Agreement where, it was agreed that the countries would not sever ties completely but would provide for the possibility of future cooperation⁵⁰. However, not all the countries were satisfied with the division and allocation of assets. This brought about feelings of discontentment, mistrust and suspicion that would later become an impediment to the revival of the cooperation among the partner states⁵¹.

Soon after the agreement was reached, the Permanent Tripartite Commission embarked on the process of reconstructing the East African region into a functioning entity with capacity to promote the socio-economic and political rights of East Africans. It came up with agreements

⁴⁸G.K Adar, Op.cit

⁴⁹E. J Omotunde, "Economic Integration in Africa: Enhancing Prospects for Success" in *Journal of Modern African Studies*, Vol. 29, No. 1 (Cambridge University Press, Mar., 1991) pp. 1-26

⁵⁰ Article 14.02 of the Mediation Agreement provided for the exploration of a possibility of future cooperation.

⁵¹ B.R Mngomezulu, Op.cit

that were geared at devolving the decision-making to the citizenry and away from the leadership. The result was a treaty that was people-centered⁵² that sought to promote sovereign rights of the East Africans beyond the national sovereign states and to harmonize and institutionalize the rights of East Africans. The commission was later transformed into a ministerial forum was formed and became the policy-making organ of the grouping⁵³ as mandated by the Summit of Heads of State. Other organs that were charged with the responsibility of coordinating regional activities with the view of deepening and broadening integration were the Council of Ministers, Co-ordination Committee of Officials later in 1996. a Secretariat based in Arusha⁵⁴.

In 1991 the three heads of state, President Moi of Kenya, President Museveni of Uganda and President Mkapa of Tanzania were committed to revamping the EAC and had several meetings to discuss and negotiate. They directed their Ministers of Foreign Affairs to devise a programme and appropriate institutional framework geared towards revamping cooperation. During a Commonwealth Summit meeting in 1993 in Harare, the three heads of state agreed to energize cooperation in the region. Later that year, they held a summit meeting in Kampala Uganda where they signed an agreement for the Establishment of a Permanent Tripartite Commission for the East African Cooperation⁵⁵. This agreement also saw the establishment of the East African Cooperation.

The revival of East African cooperation gave the region a second chance at creating unified stable market and community and creating a mutual relation between terms of development.

⁵² Ibid

⁵³ EAC, *Agreement for the Establishment of the Permanent Tripartite Commission for East African Cooperation* Kampala, 1993

⁵⁴ Ibid

⁵⁵ EAC, *Agreement for the Establishment of the Permanent Tripartite Commission for East African Co-operation on November 30, 1993* (Arusha, EAC, 1993)

During this period, steps were taken not to have a repeat of the issues that led to the breakup of the previous community⁵⁶. A new era and political environment that laid a foundation for cooperation in the region had been ushered in⁵⁷. The strategy put in place to accentuate economic partnership and progress with a strong concern for social improvement was to create structures and institutions that would capture the new spirit of cooperation between partner states through deepening and widening economic political social and cultural integration in order to improve the quality of life of the people of East Africa⁵⁸.

With the experience and lessons learned from the defunct EAC, the political leaders opted to follow a step by step integrative approach to negotiation for the integration of the region, with the hope that its history will not be repeated. Their efforts did not go unnoticed by the rest of the world. In 1998 donors pledged one billion dollars for the improvement of the East African Road Network. The United Nations (UN) was also willing to assist integration process through the International Monetary Fund (IMF)⁵⁹. The states attempted to generate the right environment for increased cooperation by setting up some fundamental and operational principles on which to operate⁶⁰.

With the establishment of the EAC in 1999, the period of cooperation came to an end ushering in a new dawn in the history of the region. The organs that had been functional continued to work in the same capacity. After its establishment various organs and institutions have been established thereafter to facilitate implementation of the treaty accordingly. These are the East African Legislative Assembly (EALA), East African Development Bank (EADB), Lake Victoria

⁵⁶ Ibid

⁵⁷ N.A Mushenga. *East African Community, Handover Report to the New Secretary General* (Arusha: EAC Secretariat, April. 2006) p 6

⁵⁸ Ibid p7

⁵⁹ S. A Gitelson. Op.cit

⁶⁰ EAC, *Treaty Establishing the East African Community*(Arusha, EAC, 2002)

Fisheries Organization (LVFO), Inter-University Council for East Africa (IUCEA), East African Civil Aviation Academy (EACAA), and East African School of Librarianship (EASL)⁶¹.

There are various organs that play a role in the integration of the East African Community⁶². The Summit that consists of the heads of states who act on behalf of the state. They are the prime decision makers of the region. for example, they took the decision to revive the community. The ministry of foreign affairs plays a dominant role in diplomatic negotiation. The minister of foreign affairs is empowered to speak in the name of the state in all matter related to external relations. The ministry of East African Community provides coordination of the community's activities in the partner states. The national parliaments adopt and domesticate legislation that allows the community to function and lastly the judiciary interprets international agreements as well as national legislation dealing with external relations.

Unlike the defunct East African Community, which attempted to impose supranational control over all areas of government, the new East African Community focuses on the harmonization of policies and the creation of a common market. With the initial objective of eventually achieving political federation in still in sight, the East African Cooperation provided for regional cooperation in virtually all spheres of life that affect the region⁶³ and in the process led to general increase in social welfare and poverty reduction. This clearly demonstrates that the new body was more inclusive than its predecessor, which had mainly focused on matters of an economic nature. When the East African Community was formed, a common travel document, a joint secretariat for railways, and the dismantling of borders for the free movement of people were all

⁶¹ EAC, "Establishment of the Organs and Institutions of the Community", in EAC, *Treaty Establishing the East African Community* (Arusha, EAC, 2002) ch.3 article 9

⁶² D. Kappeler, M. Mwangi and J. Odera, *Diplomacy: The Concept, Actors, Organs, Rules and Process* (Nairobi, IDIS, 1994) pp 27-29

⁶³ N. Ndung'u, "East African Integration as a Solution to Economic Growth and Employment Generation." (A public lecture in Kenyatta University, Nairobi, March 2010) p1-2

envisaged. Other measures to be tackled include the harmonization of fiscal and monetary policies and policies on traffic, the environment and security⁶⁴.

Kenya saw it as the best way to grow and share in an expanded economy and fully embraced the idea of reviving the EAC. On its part, Tanzania had its reservations most of which were overflows from the apprehensions of the defunct arrangement and some of the new policies that it found radical considering their socialist background⁶⁵. It held a referendum on the acceptance of the rules laid out by the community in the year 2000 and a surprising 76% of the general population voted against it⁶⁶. The fear of loss of income from tariffs drove Tanzania to take time to implement the new tax regimes. The argument was that unless preferential treatment accorded to partner states is mutually beneficial, it will do very little to guarantee intra- regional trade⁶⁷.

Tanzania and Uganda favored a step by step integration so as to consolidate gains at the stage they had already achieved⁶⁸. Uganda was reluctant to open up markets fully to Kenya because Kenya had a firmer industrial base.

The decision for the second integration of the East African Community in Kimenyi's view⁶⁹ is a right decision taken at the right time, given that it will enable all five partner states to withstand the forces of globalization, provide an enabling environment for attracting foreign direct investments, create a large market of over 90 million people, remove barriers and obstacles of trade within the East African Community, reduce the cost of doing business in East Africa, and eventually improve the standard of living for East Africans. He further classifies its basic expectations into eight categories: the past will not be repeated, micro-economic stability will be

⁶⁴ N. Ndung'u Op.cit

⁶⁵ East African Community: Rocky road to integration in *Emerging Markets Monitor* 3rd September 2007

⁶⁶ Ibid

⁶⁷ B. Otieno, "East African Community: Treaty Signals Rebirth of Union", in *Africa Business*, January 1st 2000

⁶⁸ Ibid

⁶⁹ S. Kimenyi, "Expectations of East African Integration" in EAC, *Dialogue on the Regional Integration in East Africa East African Dialogue No.4* (Arusha, EAC Secretariat, 2001) p19

realized, institutional development done, human capital sourced, increased regional security, common development projects undertaken and increased bargaining power in international forums⁷⁰.

Muthaura⁷¹ believes the integration of the East African Community is a process based on the experience that the three initial partner states had resulting from their under the defunct EAC of 1967–1977 and the East African Common Services of 1961–1967 and the challenges of the globalization of economic, monetary and information policies of the new world order. He asserts that the East African agenda for integration is perhaps the most feasible integration arrangement there is anywhere considering the history, geographical situation and cultural dimension. To him the rebirth of the community is recognition that the trading blocs have become more and more important in the global market place and is the best way to grow and expand the economy.

Baregu⁷² believes that one of the most important developments in African in the recent years has been the revival of the East African community with Kenya Uganda and Tanzania as its members because several years after its ignominious collapse, it appears to have risen from the ashes of old. Straubhaar⁷³ suggests that the “new” East African Community can benefit substantially from anticipating potential controversial issues well in advance. Thus it is important to identify, analyze and evaluate the political economic and social effects of regional integration and to formulate recommendations for the ongoing cooperation process.

⁷⁰ S. Kimenyi, *Op.cit* p7

⁷¹ F. Muthaura, “The Process for the East African Regional Integration in the East African Community” in *EAC Dialogue on the Regional Integration in East Africa, East African Dialogue No 4*, (Arusha, EAC, 2001) p 49

⁷² M. Baregu, “The African Economic Community and the EAC: Any lessons from the EU?” in Ajulu, R., *The Making of a Region: The Revival of the East African Community* (Midrand, IGD, 2005)pp45-61

⁷³ T. Straubhaar, “Theoretical Expectations on Economic integration”, in *EAC Dialogue on the Regional Integration in East Africa, East African Dialogue No 4*, (Arusha, EAC, 2001) p 29

Elbadawi and Mwega⁷⁴ argue that integration is an engine of economic growth and deeper economic integration in any given region and if achieved, could permit expansion of the regional economy to generate the threshold scales necessary to trigger the much needed strategic complementarity and attract adequate levels of investment. Wangwe⁷⁵ and Ng'eno⁷⁶ seem to agree that regional integration is a difficult and complicated process and will only succeed if there is total cooperation, transparency and commitment. They claim that the East African Community needs to step up to the challenge and find effective means and ways to succeed, because integration is neither panacea nor an end in itself, it is an instrument that can help in fostering sustainable development.

Kapstein⁷⁷ argues that the region has changed along each of these three dimensions since the late 1970s. meaning that current efforts at regional integration are being carried out under a very different set of political and economic circumstances. In terms of the relative scale argument, the fast growth of Uganda and Tanzania in comparison to Kenya over the past ten or twenty years has not only narrowed the gap between them and their larger neighbor, but it has given these smaller nations confidence in their competitive abilities. Goldstein and Ndung'u⁷⁸ say that the emergence of the revived East African Community (EAC) since 1999 has been generally greeted by observers with what might be described as "cautious optimism" On the one hand, optimism seems warranted because the EAC reflects a welcome consensus on the part of the region's leaders that trade and private sector investment are crucial inputs to sustained growth and

⁷⁴ A. Elbadawi, and M. Mwega, "Regional Integration and Foreign Direct Investment in Sub Saharan Africa", in Z. Iqbal and M. Khan (eds) *Trade reform and Regional Integration in Africa* (Washington, IMF, 1997) p 102

⁷⁵ S. Wangwe, "Proposals to Address Economic and Social Disparities in the East African Community" in EAC, *Dialogue on the Regional Integration in East Africa, East African Dialogue* No.4, (Arusha, EAC, 2001) p170

⁷⁶ N. Ng'eno, et.al., *Regional Integration Study of East Africa: The Case of Kenya Working Paper No.9* (Nairobi, KIPPRA, 2000) p19

⁷⁷ E.B Kapstein, *The East African Community: Why This Time Is Different* (Washington, SABMiller PLC, 2010) p 4

⁷⁸ A. Goldstein, and N. Ndung'u, *Regional Integration Experience in the East Africa* (Paris: OECD Development Centre, March 2001) p2

development; but on the other, some caution regarding what to expect from the EAC is hardly surprising, as the collapse in 1977 of an earlier effort at regional integration suggests that the road ahead is anything but straight-forward, with numerous barriers remaining that must be overcome.

Ford⁷⁹ has doubts over the pace of the integration process and the time table set for the achievement of a monetary union. This is because the harmonization of economic policies in the partner states is slow and uneven. In addition, the economies are structured differently therefore it would be unrealistic to expect them to respond in the same way to integration. This, coupled with variations in economic growth and inflation has brought about varying currency exchange rates. He compares the ambitious plan in the community of becoming a monetary union by 2012⁸⁰ and the fact that it took the European Union over four decades before it embarked on a monetary union so it appears to him that the East African Community is trying to do too much too soon.

Olako-Onyango⁸¹ claims that the secretariat has not done enough to ensure that information has been disseminated and suggests that the Secretariat should embark on setting up a fully-fledged media centre to publicize the community and member state activities on a daily basis. This would facilitate a steady flow of information on events and developments in the key capitals in the region. Osoro⁸² also criticizes the secretariat based in Arusha over the dissemination of information and suggests that the team should be able to restore the feeling of an East African

⁷⁹ N. Ford, Op.cit

⁸⁰ T. N Kibua and A. Tostensen, *Fast-tracking East African Integration: Assessing the Feasibility of a Political Federation by 2010* (Nairobi, CMI, 2005) p8- 11

⁸¹ J. Olako-Onyang, Op.cit

⁸² J. Osoro, "EAC Secretariat has Failed to Re-integrate the Region" in *The Sunday Standard* on 4th January 2000 p19 in Nairobi

identity among the citizens of the region and come up with new policies to realize the implementation of agreements and planned activities of the community.

3. The Role of Civil Societies in the Integration of the East African Community.

Negotiations for the revival of the EAC were not only carried out by political leaders but also by the civil society. The East African leaders had learned from the defunct community that inclusion of the citizenry was paramount if the whole process of integration was to be successful. For this reason, they partnered with the civil society to carry out workshops, civic education and opinion polls through publicity and public debate of the events and negotiations that would affect them for the rest of their lives so as to ensure that the people were informed and aware of regional occurrences. Such an exercise was carried out in 1998-1999⁸³.

The inclusion of the civil society in the integration process is an issue that has gained increased attention in recent times. In the first East African Community, the negotiations for integration were to a large extent “classical” in the sense that only the high representatives of the partner states had access to the integration process. In the new EAC civil society groups and women have played a key role in demonstrating the importance of regional integration and consistently advised and cooperated with the partner states leadership, and the newly formed establishment. For instance, they held workshops and seminars, carried out civic education and other consultations.

In line with article 127 of the East African Community treaty the partner states provided an enabling environment for civil society groups to actively participate in development activities

⁸³ Tripartite Commission for East African Cooperation, “*East African Community: Rocky Road to Integration. Kenya Country Profile*” (Nairobi, The Economist Intelligence Unit Limited, 2001)

⁸⁴ M. Baregu, Op. Cit

within the community⁸⁴. The East African Community calls for cooperation in the promotion of common measures for strengthening linkages among key stakeholders. This cooperation is to be developed by supporting joint activities, which will ultimately promote trade and investment among the Partner States.

Civil society include trade unions, professional associations, the Church, media, special interest associations, residents associations, students, business and various types of non-governmental organizations (NGOs)⁸⁵. Some of them are Association of Professional Societies in East Africa (APSEA), East African Business Council (EABC), East African Communities' Organization for Management of Lake Victoria Resources (ECOVIC), East African Constitutional Development Forum (*Kituo cha Katiba*), East African Human Rights Institute (EAHRI), East Africa Law Society (EALS) among others⁸⁶. These are basically institutions whose members are engaged in multifaceted non-state activities with the objective of transforming or preserving identity and way of life⁸⁷.

They do this by among other strategies, exerting pressure on state institutions. The activities could be economic, cultural, political or humanitarian. For example, the East African Business Council which was established in 1996 and played an active role in the integration processes by providing expert advice in economic issues when the Tripartite Commission brought together business leaders from the whole region which encouraged cooperation in business related issues,

⁸⁴ EAC, *Treaty Establishing the East African Community* (Arusha, EAC, 2001)

⁸⁵ Ibid

⁸⁶ D. Deya, "The Emerging East African Federation and its Implications for Civil Society, Governance and Accountability, Particularly in Tanzania" A Presentation for the Public Forum on 27th January 2006 in Dar es Salaam. p 6

⁸⁷ EAC Secretariat, *Important Aspects of the Treaty for the Establishment of the East African Community*, (Arusha, Friedrich Ebert Foundation, 2002) p 36

standardization of quality, quality assurance, employment and harmonization of labor and remuneration issues⁸⁸.

In an effort to improve the business environment in the community and promoting the East African market, the partner states partner with the civil society and the private sector in the attempt to promote investment codes, and the protection of property and other rights. This includes proper regulation of the private sector. An integral part of this enterprise is to promote the development of the East African market, through linking up of different types of infrastructure, within the Community, and removing barriers and obstacles to the development of the market⁸⁹. Inclusion of the general population was a people-centered approach that showed that public opinion mattered as opposed to integration based on the opinion of the ruling elite.

Civil society groups like *Kituo cha Katiba*, and East African Law Society⁹⁰ have observer status in the region that enables them to engage with the secretariat constantly on several issues for instance on the review of the treaty which led to its revision in 2001⁹¹. They have however been criticized for not doing much in advocating for the rights of the marginalized communities like the Batwa, the Ogiek and the Benet. Onyango⁹² says that the civil society needs to adopt more proactive measures to check the excesses of the state and also ensure that the EAC adopts more pro-people measures in its operations.

The key shortfall of civil society is their lack of cohesion⁹³. Even though they tackle similar problems there is little partnership or collaboration amongst them. While the different civic groups play different roles, they are all part of a jigsaw puzzle hence there is no synergy in the

⁸⁸ Ibid p36

⁸⁹ Ibid p 36

⁹⁰ ADC, "Regional Workshop Report on civil society and the East African Community Treaty", (Kampala, ADC, 2005) p8

⁹¹ Ibid.

⁹² J. Oloka -Onyango, Op.cit

⁹³ D. Deya, Op. cit

activities of different groups. There is little evidence to show that the activities of civil society have benefited the grassroots particularly in the dissemination of information about the benefits of regional integration⁹⁴. In addition civil society groups lack the analytical capacities that would adequately prepare them to engage in contemporary issues of globalization and regional integration. The EAC emphasizes economic cooperation and development with a strong focus on the social dimension. The role of the private sector and civil society is considered as central to the regional integration and development in a veritable partnership with the public sector and as such, it needs to play its role as a pressure group and a monitor of the implementation of the provisions of the EAC treaty.

4. Conditions for Effective Integration

There is need for negotiation for an arrangement of regional economic integration with its merits of making it possible for individual partner states realize both internal and external growth through enhanced cooperation, which will positively impact on their economies particularly on the small national markets. The inability to reach agreements that are plausible for all parties involved in negotiations has posed a big obstacle to the formulation of an effective development strategy. It has been observed that the approach to the integration process of the East African Community has been primarily a “top-down” approach involving only the elite and failed to engage all the peoples of East Africa in the processes. Unfortunately, this is one of the premises that caused the demise of the previous Community and stands to threaten the survival of the present Community. There have been several recommendations on how to make the integration process more inclusive and participatory by the majority of the population with the view of

⁹⁴ J. Oloka-Onyango, Op. cit

transforming it into the desired bottom –up approach if the people of East Africa are expected to form a bond of unity as “one people” belonging to “one nation”⁹⁵.

Scholars like Adar⁹⁶ and Ford⁹⁷ recommend that the EAC Secretariat should endeavor to fill the information gap, especially in sensitizing and “selling” the benefits of the EAC to the people. This will make the people more aware of what is happening in their own countries and take an active role in shaping their own future⁹⁸. They also tend to own the integration process and have a sense of responsibility towards it. Currently, many East Africans know very little about the occurrences in the region but know a great deal about what is going on in America and Europe⁹⁹. Integration of the East African region would be effective if the process is based on a market economy where the three partner states reduce control and participation in the economic activities at the national level and instead encourage the participation of the private sector and civil society to mobilize resources internally and externally and pool them to identify and invest in joint projects for mutual benefit. This coupled with policy co-ordination and harmonization and foreign direct investment tends to better the regional economy and make the region becomes more attractive to outside investors¹⁰⁰. To strengthen the integration process, it is important to speed up the harmonization of monetary, fiscal and exchange rate policies, and to achieve currency convertibility, even though it is difficult to achieve.

EAC member states will have to deal with the challenges of globalization, new membership, declining import tariffs revenue and imbalances that may arise as the integration process intensifies. They must also tackle problems that could arise because of overlapping membership

⁹⁵ ADC, Op.cit pp11

⁹⁶ G.K Adar, Op.cit

⁹⁷ N. Ford, Op.cit

⁹⁸ J. Oloka-Onyango, Op.cit

⁹⁹ Ibid

¹⁰⁰ N. Ndungu, Op.cit

in regional bodies with different rules of origin and lists of exceptions. This means that governments must focus on creating an economic environment that induces investment and risk-taking, while the private sector must act to take advantage of the new opportunities that regional integration offers for long-term expansion¹⁰¹.

If one or two member countries are willing to integrate more quickly, they should not be deterred so as to avoid having regionalism dictated by the slowest member. At the same time, acceptable mechanisms for compensating losers are necessary. There should be no restrictions on factor mobility and, in fact, greater labor mobility should be promoted in the region¹⁰². To ensure that efficiency gains accompany economic integration, members should establish a common policy towards foreign direct investment to encourage cross border joint production. Finally, resources will have to be devoted to public awareness of the opportunities arising from EAC, since the success of the process ultimately depends on the involvement and support of the people of East Africa.

Human security has also been high on the agenda of the EAC as it attempts to find ways of dealing with demanding issues such as hunger, healthcare, crime prevention, political and civic freedoms, war prevention and democratic participation¹⁰³. It has been argued that for effective integration, states should pursue state security that takes into account human security through human rights education being added into the national curriculum, civic education on human rights establishing norms and standards of internalized security, proper management of the refugees in terms of human rights and accommodation, intensifying peace building efforts in the region, building professional militaries and security forces that are accountable to civilian

¹⁰¹ L.O Agubuzu, "Regional Economic Integration: A development Paradigm for Africa" in B. Onimode, et al, *Africa development and Government Strategies in the 21st century: Looking back to Move Forward* (London, Zed books 2004 pp191-205

¹⁰² E.B Kapstein , Op.cit p8

¹⁰³ T.M Shaw, Op.cit

authorities who safeguard the rule of law and human rights, advocating and organizing for inclusive citizenship laws across the EAC through civic education¹⁰⁴.

The integration process should be supported by adhering to the stipulated deadlines and timetables. Many of the timetables announced for the liberalization of intra-regional trade, the customs union, monetary union have not been kept. Keeping to timetables maintains credibility, exerts a positive effect on private economic agents and contributes to the success of integration, just like in the case of the European Union where many of the schedules have been adhered to¹⁰⁵.

One important characteristic of the community is that its decision-making bodies comprise the representatives of national governments rather than legislatures or electorates. This means that bureaucratic interests are weighed very highly and resolving issues and implementing reforms becomes more difficult. A further strengthening of the authority of the communities' legislative assembly in a similar fashion as that of the European Parliament of the European Union¹⁰⁶ would be one step in the right direction to reinforce the democratic foundation of the community and thereby improve the possibilities for its reform.

The East African Community aims at achieving sustainable and equitable economic, social and ecological development that would be based on a people-centered and private sector led policy. For the targeted achievements, the participation of private sector and civil society plays an important role.¹⁰⁷ The revived EAC also hopes to create a cohesive environment where sustainable development can be achieved through increased trade, investment and production.

¹⁰⁴ ADC, Op.cit p 9 ... See also Oloka-Onyango, J., Op.cit

¹⁰⁵ R. Langhammer, 'The Developing Countries and Regionalism', in *Journal of Common Market Studies* Vol. 30 No. 2 (Blackwell, 1992) pp211-231

¹⁰⁶ R. Shams, "Vision and Historical Development of European Integration Experiences and Historical Development of European Integration from Customs Union to Economic and Monetary Union" in P. Anyang'-Nyong'o A. (ed.) *Regional Integration in Africa; Unfinished Agenda* (Nairobi, Academy Science Publishers, 1990) p65- 92

¹⁰⁷ EAC, *Dialogue on the Regional Integration in East Africa East African Dialogue No.4* (Arusha, EAC Secretariat, 2001) p1

CHAPTER 3: THEORY OF NEGOTIATION

INTRODUCTION

Negotiation is the pursuit of agreement by compromise and direct contact¹. Negotiation can be carried out directly in through a face to face² fashion or through a third party³, verbally or written, or in a hostile or friendly⁴ manner. It entails problem solving, bargaining, cooperative decision making and communication in order to try and reach a voluntary agreement about something⁵. There are many types of international negotiations. These include labor negotiations usually between employers and employees, business contract negotiations among or within businesses, diplomatic negotiations conducted within a diplomatic setting⁶.

This study is interested in diplomatic negotiations. Diplomatic history illustrates there is an enormous diversity in international negotiation⁷ between governments that are constantly engaged in diplomatic negotiation over several issues that include: seeking extension agreements, settling differences arising from previous agreements, conflict resolution, redistribution of agendas when conflict of interests create permanent divisions between sides and keeping in touch with opponents as a substitute for violent action⁸. Negotiations are held to seek extension agreements that introduce weighty precedents that would provide specific means of

¹ G.R Berridge, *Diplomacy Theory and Practice* 2nd ed. (New York, Palgrave, 2002) p 25

² S. Ting-Tooney and M. Cole, "Intergroup Diplomatic Communication: A Face Negotiation Perspective" in F. Korzenny, S. Ting-Tooney and S. Douglas – Ryan (eds.) *Communicating for Peace: Diplomacy and Negotiation*, (Newbury, Sage, 1990) pp77 -93

³ M. Mwangi, *Diplomacy*, Op.cit p69

⁴ D. Kappeler, M. Mwangi and J. Odera, *Diplomacy: The Concept, Actors, Organs, Rules and Process* (Nairobi, IDIS, 1994) pp 98-123

⁵ Ibid

⁶ D. Kappeler, M. Mwangi and J. Odera Op.cit p54

⁷ F. Ikle, *How Nations Negotiate* (New York, Kraus.1987) pp26-42

⁸ Ibid

settling differences that may arise from previous agreements. Secondly may be held for normalization purposes usually when there is instability in a region. Thirdly, they may be required for redistribution of the agenda when the conflicting interests are the principal topic of negotiation because of clear permanent divisions between sides. Other reasons include keeping in touch with opponents as a substitute for violent action⁹.

Negotiations can be either multilateral or bilateral¹⁰. Bilateral are concerned with issues relating to the official relations between two actors or states. They may be concerned with a variety of topics such trade, cooperation etc. Multilateral negotiations are concerned with issues of wider application and are conducted between the representatives of many states for example they take place in forums like the United Nations, or under the auspices of regional organizations like African Union, or sub regional ones such as the East African Community. Zartman¹¹ points out that multilateral negotiation is fundamentally different from bilateral negotiations because the initial position of the parties is not adversarial. In bilateral negotiations the process is structured between two opponents, whereas in multilateral negotiations it must be structured according to the parties and issues and the roles the parties play.

Zartman and Berman¹² identify three stages, each with different problems and behaviors that are the general path or sequence through which the negotiation process flows, not as one of many ways to arrive at an agreement. One can differentiate between a pre-negotiation phase, a

⁹ Ibid

¹⁰ G.R Berridge, *Diplomacy Theory and Practice* 2nd ed. (New York, Palgrave, 2002) p55

¹¹ W.I Zartman and M.R Berman, *The Practical Negotiator* (New York and London: Yale University Press. 1982), p.42

¹² Ibid

negotiation phase and the implementation phase. This chapter analyzes the process of negotiation by looking at the main activities that take place in the three main phases of negotiation; the pre-negotiation, negotiation and post-negotiation phases.

In the past, negotiations were perceived as beginning and ending at the negotiation table. This belief has since changed. The modern analysis of negotiation suggest that it predates the activities at the negotiating table and continues long after the actual around-the –table negotiations have been concluded¹³.

1. Pre-negotiation

Pre-negotiation is loosely referred to as negotiation about negotiation whose purpose is to agree on the dimensions of negotiation space. The fundamental question here is on what to negotiate about and what not to negotiate¹⁴. Stein¹⁵ asserts that the pre-negotiation phase is the initial process of negotiations which takes place when one or more parties are willing to consider discussing certain issues that bring about a situation that need to be resolved before they get worse¹⁶, and ends when formal negotiations begin or when the prospect of negotiation as a policy option is abandoned. The need for negotiation has to be recognized and accepted by all the parties in order for the process to start as a joint effort in search of a solution favorable to the interests of all involved¹⁷. The pre-negotiation phase sees the parties come together to develop

¹³ M. Mwangi, M., Op.cit p70

¹⁴ L. N Rangarajan, *The Limitation of Conflict: A Theory of Bargaining and Negotiation* (London, Croom Helm, 1985)

¹⁵ J.G Stein, (ed.) *Getting to the Table: The Processes of International Pre-negotiation*. (Baltimore: Johns Hopkins University Press, 1989) p 10

¹⁶ F.C Ikle, *How Nations Negotiate* (New York, Harper, 1987) p 43

¹⁷ Ibid

foundations on which the negotiations will be held. This involves recognizing and broadly framing common problem issues by first looking at the history behind the relationship between the parties, the current issues and at hand how these two will influence future relationships¹⁸. This is the building block needed to understand the basic concept of the partnership agreement sought, because from the onset, each party has his own agenda and priorities so this serves formulate principles upon which the parties are as satisfied as they can be, within the various parameters of what they bring to the table. If the parties cannot agree on process issues, it is unlikely that they will be able to agree on the substance issues of the negotiation¹⁹.

This phase requires the parties to identify the facts about the issues that led to the decision for negotiation to be taken by gathering concise and detailed information concerning them particularly their precedents and referents. This provides clarity with regards to the context and perceptions important for all parties and allows for an equal footing for all and an opportunity to assess situations before deciding to negotiate, because the information gathered prior to the negotiation or during discussions is a major condition for effective negotiation.

The pre-negotiation process establishes the domain of issues over which the negotiations will take place and can be represented as a series of interrelated and interdependent steps that involves intelligence gathering, strategy creation and preparation activities that need to be performed prior to meeting with the other party. The parties must determine their goals,

¹⁸ R. J Lewicki, D.M Saunders and J.W Minton, *Negotiation, 3rd Edition* (San Francisco: Irwin McGraw-Hill, 1999) p 5

¹⁹ H. S Saunders, "We Need a Larger Theory of Negotiation: The Importance of Pre-Negotiating Phases," in W.J Breslin and J.Z Rubin, *Negotiation Theory and Practice*, eds. (Cambridge: Program on Negotiation Books, 1991) pp. 57-70

anticipate what they want to achieve, and prepare for the negotiation process by coming up with a negotiation agenda that is a comprehensive list of issues and priorities from each side which is exchanged in advance for to allow for further consultations between the negotiators themselves and also with their respective constituents. There may be need to confer with their constituents beforehand, verify compliance with the agreement or hold elections²⁰, so the timing of the talks is important for the time frame to be realistic. Discovering this before making a firm commitment to negotiate can prevent a serious mistake.

The pre-negotiation phase also involves assessment²¹. Assessment involves determining whether the conditions are ripe for negotiations²². The key question addressed in an assessment is whether to proceed with the talks or not. Additionally, an assessment gauges the potential for agreement. If a written assessment is prepared, the results of the assessment should be shared and discussed with all potential participants of the collaborative process²³.

Once a decision is made to negotiate it is very difficult for a party to back away from the negotiations without negative repercussions. The party that backs out runs the risk of being labeled the "spoiler" or worse, the others might continue to negotiate and argue that the party that walked out had an opportunity to participate but declined. Another important reason for the

²⁰ R.J Lewicki, D.M Saunders and J.W Minton, Op.cit

²¹ A. Ball, and M. Rebori, Managing Natural Resource Disputes – No. 2

²² M. Mwangi, *Conflict in Africa: Theory, Processes and Institutions of Management* (Nairobi ,CCR, 2006) p115

²³ R.J Lewicki, S. Weiss, and D. Lewin, "Models of Conflict, Negotiation and Third Party Intervention: A Review and Synthesis" in *Journal of Organizational Behavior, Special Issue: Conflict and Negotiation in Organizations: Historical and Contemporary Perspectives* Vol. 13, No. 3, (John Wiley & Sons Stable, May 1992) pp. 209- 252

parties to meet face to face before the negotiation step is to enable them to own the process and take responsibility for how the process unfolds²⁴.

Kumar and Worm²⁵ argue that pre-negotiation planning and preparation develops situational acumen through mental preparation, self-confidence, and the ability to make adjustments in behavior as the negotiation process unfolds. It is advantageous because builds the confidence of the negotiators and the negotiation process itself, it develops an atmosphere of goodwill between the parties; embodies professionalism; increases the chance of coming to a favorable agreement²⁶.

When preparing for negotiation for regional integration, states would need to be aware of each other's national interests, what they stand to gain or lose by becoming a member of a regional grouping and then prioritize their values and interests into what they can compromise and what they cannot. Each party must decide for themselves whether negotiation can lead to a better alternative than the status quo in the event that they are all willing to negotiate, and if there can be a fair agreement and balance among the parties in terms of skills and resources²⁷. As they hold preliminary negotiations, all parties are aware of the various stands taken and any incompatibilities can be addressed.

²⁴ S. Ting-Tooney, and M. Cole, "Intergroup Diplomatic Communication: A Face Negotiation Perspective" in F. Korzenny, S. Ting-Tooney, and S. Douglas – Ryan (eds.) *Communicating for Peace: Diplomacy and Negotiation*, (Newbury, Sage, 1990) pp77 -93

²⁵ R. Kumar and V. Worm, "Institutional Dynamics and the Negotiation Process: Comparing India and China" in *International Journal of Conflict Management* Vol. 15, No. 3, 1994 pp. 304-334

²⁶ Ibid

²⁷ A. Ball, and M. Rebori Managing Natural Resource Disputes – No. 4 Special Community Development Specialist, Western Area Loretta Singletary, Extension Educator, Central Area.

Negotiation for regional integration requires partner states to share information in order to trust each other over time²⁸ for effective integration and cooperation to take place. Hence, the initial contact made by parties to a negotiation before the actual talks²⁹ is very important. During the pre-negotiation phase the initial proposals are offered by the parties. These may be met with acceptance, rejection, a counter-proposal or an appeal for time. It is also possible to offer a 'package deal' as a way to turn an unacceptable proposal into an acceptable one³⁰. Because negotiations typically involve more than one issue, it is helpful for negotiators to anticipate different ways of packaging issues. They can balance the issues they regard as most important by being more flexible about items they deem less important³¹. They should also decide which items they can abandon and use as leverage to get what they really want with respect to the most important issues.

According to Kappeler and Mwangi³² there are three main concerns in the pre-negotiation phase of bilateral negotiations. One concern is the preparation of composite briefs. A composite brief sets the limits within which the delegates are to negotiate³³. It is important for every concerned department to prepare its own brief which is later consolidated with those of other departments to create a composite brief that provides guidelines on the country position during the negotiation process. It is distributed before the start of the negotiations and forms the agenda of the negotiation. In bilateral negotiations the decision to adopt a particular agenda is expected to

²⁸ F. Casmir, "International Negotiations: A Power - Trust Relationship", in F. Korzeny, S. Ting-Tooney and S. Douglas - Ryan (eds.) *Communicating for Peace: Diplomacy and Negotiation*, (Newbury, Sage, 1990) pp40-54

²⁹ P. Carnevale and D. Pruitt, 'Negotiation and Mediation', in *Annual Review of Psychology* (MIT Press, 1992) p.531-582.

³⁰ L. Randolph, 'A Suggested Model of International Negotiation', in *Journal of Conflict Resolution*. Vol.10 No.3 (Sage Publication Inc., Sept, 1966) pp344-35

³¹ R.J Lewicki, D.M Saunders and J.W Minton Op.cit p 61.

³² D. Kappeler, M. Mwangi and J. Odera Op.cit p99-100

³³ Ibid

be unanimous as both parties have veto power so there can be no agreement if they do not concur. However in multilateral negotiations, decisions are arrived at by majority voting where a democratic consensus is attempted.

The items on the agenda can be negotiated either simultaneously by tackling everything together or sequentially from easy to hard³⁴. Discussions about these procedural issues are often crucial for the success of substantive negotiations³⁵. Issues that are similar in nature or that can be linked³⁶ are determined as the prioritization of the agenda according to the importance of the issues the parties wish to be discussed. Negotiators' power, issue importance, and time constraints are posited to be important determinants of whether sequential or simultaneous negotiations are the most advantageous course of action to pursue in terms of the potential utilities to the parties. If a sequential agenda strategy is undertaken, time constraints, issue importance, and expectation of future interaction provide further guidance in establishing the most advantageous ordering of the issues. Once the agenda is drawn up, a copy of the proposed agenda for the first of a series of meetings and an invitation for their chosen representative to participate is sent out to all the actors involved. In both bilateral and multilateral negotiations, the agenda is circulated in advance, particularly for ad hoc meetings. For institutionalized multilateral negotiations, a general agenda exists that is based on the founding charters and statutes that have been translated to the functions and purposes of the organization. This agenda contains procedural rather than substantive matters³⁷.

³⁴ R.J Lewicki, D.M Saunders and J.W Minton, p 41

³⁵ G.R Berridge, Op.cit p36

³⁶ R.D Tollison, and T.D Willet, 'An economic Theory of Mutually Advantageous Issue Linkages in International Negotiations' in *Journal of International Organization*, Vol. 33, No. 4 (Cambridge Univ. Press, 1979) pp425-449

³⁷ G.R Berridge, Op.cit. p.40

Another concern is the composition of the delegation to a negotiation. It should be composed of technocrats from departments relevant to the negotiation as well as those from the ministry of foreign affairs. The correct people should be identified and selected as part of the preparation for the actual talks of the negotiations, and be made aware of their level of involvement, responsibilities and authority to act on behalf of the state for example, ascension and ratification of treaties, make commitments³⁸. This enhances the efficiency of the negotiation process and could contribute to a better outcome. The organizers of the negotiation should be aware of the number of delegates in order for them to map out the logistics and provision of resources appropriately³⁹. Kappeler and Mwagiru⁴⁰ suggest that leader of the delegation should be a senior state technocrat with vast knowledge and a wealth of experience in the areas under negotiation⁴¹. They also claim that the delegation to a negotiation.

Multilateral negotiations have similar concerns as those in bilateral negotiations and as such, the pre- negotiation process is not different from those in bilateral forums. They however take place through informal consultations where the principle of the negotiation and the subject to be discussed need to be substantive especially in the case of negotiations aiming at the adoption of a multilateral treaty, and acceptable to those who are to be invited to the conference⁴².

³⁸ Ibid

³⁹ Ibid

⁴⁰ D. Kappeler, M. Mwagiru and J. Odera Op.cit pp99-100

⁴¹ Ibid

⁴² G.R Berridge, G., *Diplomacy: Theory and Practice* 4th ed. (New York, Palgrave, 2005)

2. Negotiation phase

The negotiation phase is where the parties sit at the same table to discuss the issues that affect them. It is the most visible stage of the negotiation processes and may only be initiated after the parties have agreed to explore the possibility of negotiation and have reached a turning point⁴³. It is expected that at by the end of the negotiations, the outcome will be near to each parties preferred position as possible and that they all would have reached an agreement that is acceptable. The actual negotiation is a forum where the discussions held follow a set of suggested rules and procedures. The participation in the actual negotiation is often voluntary and any party that does not attend is deemed not to be interested in taking part.

The need for negotiations as mentioned earlier stems from the agreement that it is in the parties' best interest to discuss issues of common concern, which could be long term visions or gains, short term strategies with the aim of reaching a consensus on what needs to happen. For the East African countries, the evolving society forced the partner states to negotiate for the inception of a regional institution the East African Community, to address socio-economic issues affecting them.

Mwagiru⁴⁴ asserts that if the pre-negotiation phase was not well conducted, it is unlikely that the negotiation phase will be fruitful. At this point, each side recognizes that the other is serious about the idea of finding a common solution and that both sides are willing to 'give and take or

⁴³ W. Zartman, 'Negotiation as a Joint Decision Making Process', in *Journal of Conflict Resolution*, Vol. 21 No.4 (Sage Publications Inc. Dec 1977) see also D. Druckman, "Turning Points in International Negotiation: A Comparative Analysis" in *Journal of Conflict Resolution*, Vol. 45, No. 4 (Sage, Aug., 2001), pp. 519-544

⁴⁴ M. Mwagiru, *Diplomacy Op.cit*

concede and receive⁴⁵. The parties are faced with deciding upon a general framework for solution and may begin with a small agreement concerning initial details that will provide the steps for further progress⁴⁶. It is expected that the parties to the negotiation keep a flexible and comprehensive mind-set, focus the attention resolving the problem, and maintain the communication⁴⁷.

Randolph⁴⁸ argues at the negotiating table, parties attempt to resolve major incompatibilities for example, the dilemma of limited benefits, in which the parties attempt to secure maximum benefits at minimum risk. The parties are faced with the dilemma of whether to negotiate or to agree and the contradiction between the definite benefit and the definite obligations that accrue from the negotiations. The environment within which the negotiations are being held, the cumbersome complexity of multiple issues, the number of delegates, their perceptions, assessment and choices as well as time pressures all influence the actual negotiation process⁴⁹. For example stereotypes and fears about Kenyans' aggressiveness in business and property acquisition influenced acceptance of partner states in that they were apprehensive about opening up their markets and relaxing immigration rules within the East African Community⁵⁰ and

⁴⁵ Ibid

⁴⁶ G.R Berridge, Op. cit

⁴⁷ S. Ting-Tooney, and M. Cole, Op.cit pp77 -93

⁴⁸ L. Randolph, L., Op. cit

⁴⁹ F. Casmir, Op. cit pp40-54

⁵⁰ C.P Potholm, 'Who Killed Cock Robin? Perceptions Concerning the Break -up of the East African Community' in *Journal of World Affairs*, Vol.142 No. 1 (Sage publications,1979) p 45-56

affected the negotiation process. Ikle⁵¹ says that the negotiation or detail phase allows the debate and 'packaging' of specific issues to construct a settlement acceptable to both sides.

At the negotiating table, the parties begin a process of addressing the proposals and counterproposals that have been put forth for the ostensible purpose of reaching an agreement after changing the behavior of at least one party⁵², and then devise a formula for dealing with the aftereffects⁵³. They employ various strategies and tactics in the attempt to gain leverage over each other in the negotiating process, which require high degrees of creativity, which is elicited in the way negotiators handle concession-making situations⁵⁴. Each side tries to exploit its advantages from which it benefits for example economic or political weight or something that the other side wants but doesn't have where several issues are under negotiation. Advantages in one field may be used to offset disadvantages in another⁵⁵. Negotiators may look at negotiations as either competitive or as cooperative⁵⁶ engagements and as such, employ various tactics and strategies in the negotiation process in a bid to get a favorable outcome. There could be instances of parties entering into negotiations in order to stall the negotiations or to gain some political advantage by virtue of being seen to enter into the process of negotiating regardless of the participant's actual commitment to seeing the negotiations succeed.

⁵¹ F. C Ikle. Op. Cit p 25

⁵² R.G Winham, 'International Negotiation in an Age of Transition' in *International Journal*, Vol. 35, No. 1, (Canadian International Council, 1979/1980), pp. 1-20

⁵³ M. Mwagiru, *Diplomacy: Documents Methods and Practices* (Nairobi, IDIS, 2004) p 67-68

⁵⁴ F.C Ikle, F., Op.cit p43

⁵⁵ D. Kappeler, M. Mwagiru and J. Odera Op.cit p104-104

⁵⁶ G.R Berridge, Op. cit p48

One strategy that can be used is compromise. The negotiators can decide to compromise on individual issue⁵⁷ for example by splitting the difference between the opening demands of the parties on the timetable for lowering of import tariffs on specific products originating from partner states in the EAC and on new trade deals between EAC and the European Union⁵⁸. They could also make concessions, a strategy which involves reducing one's demands or aspirations to accommodate the other party. It is done by giving the other side more or less what it wants on one issue in return for satisfaction on a separate one. These exchanging points work best when the parties are able to acquire something worth more to than what they surrender⁵⁹. In some cases where one party trades something which it values highly but it knows it is going to have to surrender it anyway, irrespective of whether the other party gives something back in return. Another strategy is contending⁶⁰ involves trying to persuade the other party to yield where the parties resort to threats and/or coercion in a bid to gain from the negotiation this leads to horse trading which increases tensions in the negotiation. Problem solving as a strategy involves trying to locate options that satisfy both parties' goals. It is a major way through which the parties can arrive at a win-win solution. The host of problem-solving tactics includes active listening, providing information about one's own priorities, and brainstorming in search of solutions. These strategies are somewhat incompatible because they require different mind-sets and may have contradictory effects on the other party⁶¹. However a mixed strategy that incorporates all these strategies can be used. Hence in the event that an agreement is sought if conditions reduce

⁵⁷ Ibid
⁵⁸ J. Oloka-Onyango "Who Owns the East African Community?" *A Presentation on the East African Community*, (Kampala, DENVIA 2005)
⁵⁹ W.I Zartman and M. Berman, Op.cit pp13-14; 66
⁶⁰ B. Scott, *The Skills of Negotiating* (Hampshire, Gower, 1981) Pp49-57
⁶¹ Ibid

the likelihood of using one strategy, the others become more likely. If two of these strategies are ruled out, the use of a third becomes virtually certain.

Various tactics are characteristic of international negotiations. These include coercion which is using force, or the threat of force to wrestle concessions from an opponent; presenting a strong opening argument at the start of the negotiations that is at a position that is higher than what you realistically estimate you can achieve; Salami tactics which basically involves prolonging a negotiation to a painstakingly slow pace, only giving a very small concession to the other side when it can no longer be avoided in order to placate the other side for a little while longer. It consists of tabling a position, decomposing and aggregating the relevant information wherever possible, and then setting about point by point to reconcile the different positions of the parties.

Over time, the negotiation accumulates a settlement from the bottom up, a phenomenon which participants refer to as 'building a package'⁶². In this process, negotiators monitor certain feedback variables, such as domestic support for the negotiation, which indicate the willingness of their government and others to co-operate in a negotiated settlement. Another tactic employed is coalition building, where it is almost impossible, especially for smaller less well-resourced states, to track the positions and preferences of all the parties on one or multiple issues⁶³. By sharing information and coordinating their actions, coalition building provides states with a means to navigate multilateral negotiations and thereby produce outcomes. Zartman and Berman⁶⁴ argue that the best tactic negotiators should adopt is a mixed strategy that will allow them to maximize their ability to be 'tough to demand and soft to reward'. Just like in the pre-

⁶² L. Randolph, Op.cit

⁶³ J.S Odell *Writing Negotiating Trade: Developing Countries in the WTO and NAFTA*. (New York, Cambridge University Press, .2006) p13

⁶⁴ W.I Zartman and M. Berman Op.cit p171

negotiation phase, trust has to be established in the negotiation phase so each party to the negotiation has to be seen as negotiating in good faith because without it, the negotiation will surely fail⁶⁵.

Agreements in negotiations are reached in various ways. One is through closing the way, which basically involves sharing a lot of information which in turn opens up effective patterns and channels of communication. This enables the parties to identify possible open paths and the potential approach to resolution becomes narrower. Another method is through fractionalization of issues into smaller parts to make negotiation manageable creating opportunities for incremental success. The danger lies where issues are inappropriately divided and people try to deal with closely related pieces separately⁶⁶. Lastly, successive reframing of the problematic issues through iterative refinement of a problem statement during which they gradually define and redefine the issues to be resolved in narrower ways until the problem statement resembles a solution it involves framing options, assessing options then reframing the remaining options and issues⁶⁷. It should be noted that the negotiation phase of multilateral negotiations are longer than bilateral ones. The rules in this stage are quite different and need considerable elaboration.

A memory of the proceedings of the actual negotiation is kept⁶⁸. This is because sometimes parties to an agreement walk away with quite different ideas about what they have agreed⁶⁹. A report indicating the result or resolution arrived at is written in a manner that expresses the goals

⁶⁵F. Casimir, Op. cit pp40-54

⁶⁶ R.J Fisher. "Pre-negotiation Problem-Solving Discussions: Enhancing the Potential for Successful Negotiation Getting to the Table: Process of International Pre-negotiation" in *International Journal*, Vol. 44, No. 2, (Canadian International Council, Spring, 1989), pp. 442-474

⁶⁷ Ibid

⁶⁸ M. Mwangi, op.cit p76-77

⁶⁹ G.R Berridge, *Diplomacy: Theory and Practice*, 2nd ed., (New York: Palgrave, 2002), p. 27

of the parties. It should contain clear performance milestones, specify who is responsible for compliance, and to the extent possible, include clear methods of monitoring and enforcing such performance⁷⁰. The actual negotiations end with follow up protocols being established to ensure that implementation of the agreements reached is done. It includes coming up with indicators, deadlines timeframes assigning different groups different tasks and so on⁷¹.

3. Post-negotiation

The post-negotiation or implementation phase is the final phase in the negotiation process. After the formal negotiations are over, the post negotiation teams now begin to implement the provisions of the agreement reached, thus, providing the rationale behind the whole negotiation process⁷². Here, the commitment of the parties to the agreements is tested⁷³. The implementation phase should begin as soon as possible, to capitalize on the momentum of the negotiation phase. The first activity is usually the writing of composite reports done by the delegates after the talks⁷⁴.

A good report anticipate future problem issues that are likely to arise and how best to deal with them⁷⁵. It should be an analytical document detailing what happened during the negotiations, the position taken, the difficulties encountered and how these difficulties were dealt with. Where a treaty was signed and requires ratification, the stage should be set up effectively to ensure that

⁷⁰ Ibid

⁷¹ Ibid

⁷² A.C Vigil, et.al (Eds.) Op.cit

⁷³ A. Ball and M. Rebori, *Managing Natural Resource Disputes – No. 4*

⁷⁴ M. Mwagiru, Op.cit p104

⁷⁵ A.C Vigil, et.al (Eds.) Op.cit p67

this is done within the confines of the domestic laws so that the treaty is constitutional. There are some statutes and laws that would require domestication for the new treaties to be applicable locally. This domestication should be done carefully to avoid a situation where the constituents feel compromised and shortchanged. The cabinet papers that authorize ratification should be prepared and tabled in parliament so that the treaty can be passed into law. The reports are important because they provide the memory of the negotiation which is important for future reference and policy making. The East African Community policies for example, are designed to be implemented and in many cases, generate beneficial impacts and outcomes at the local level⁷⁶. The responsibility for implementation of the agreement can be assigned to the parties involved in the pre-negotiation or negotiation phase, a government agency, a non- governmental organization that may or may not have been party to the negotiation or even new group created for the sole purpose of implementation⁷⁷. It is advisable to involve the implementers in the negotiation early enough so that they may share in the history of the process and understand the terms of the agreement. This reduces the problems that would arise if they were to be tasked with the implementation of an agreement they know very little about. Ideally, a few of the original participants in the negotiation should be involved in the implementation⁷⁸.

The implementation will normally follow the rules and guidelines that had been agreed upon at the close of the negotiation. In the event that the negotiations have come to an end, full implementation begins. Where the negotiations ended in the conclusion of a treaty, the process of ratification of that treaty needs to begin during the post negotiation phase. If another round of

⁷⁶ G. Saitoti, *the Challenges of Economic and Institutional Reforms in Africa*, (Hampshire, Ashgate, 2008) pp 89-118

⁷⁷ Ibid

⁷⁸ D. Kappeler, M. Mwagiru and J. Odera Op.cit 105-106

negotiation is expected, then the implementation phase and the pre-negotiation phase of the new round of negotiations are merged into one. In the case of continued bilateral diplomatic negotiations, the inter-ministerial committee that was formed during the pre-negotiation phase should be reactivated during this stage, to allow it to prepare adequately for the next round of negotiations⁷⁹.

Where the implementation process requires a law or a legally binding contract, organ charged with the powers and mandate does so with respect to the constitutional and administrative procedures of the individual states⁸⁰. Implementation of the agreements implies that the agreement confers benefits and risks that are favorably balanced for all or nearly all the parties that have participated in the negotiation process. At the end of the negotiations, all parties produce and ritualize a common vision of the future they desire⁸¹, identify a strategy to achieve that vision, and identify expected results and impacts, and protocols and indicators to monitor and evaluate them.

For effective implementation, all parties are expected to deliver on what they have agreed on and evaluate or review the outcomes and expectations. Kaufman⁸² believes that the outcome of previous negotiations often have significant bearing on current or future negotiations hence, in order for the implementation of the negotiated agreement to be deemed successful, the parties have to actively follow up build strong relationships with each other. The implementation phase

⁷⁹ M. Mwangi, Op.cit 104

⁸⁰ A.C Vigil, A.C., et.al (Eds.) Op.cit p68

⁸¹ Ibid

⁸² J. Kaufman (ed.), *Effective Negotiation. Case studies in Conference Diplomacy* (Dordrecht, Martinus Nijhoff Publishers, 1989) pp54-56

can be handled in two ways; the top-down and the bottom-up approach. The top down⁸³ approach assumes that some recognizable political entity is actually capable of steering implementation. The EAC has the Summit of Heads of States that acts as the decision making organs of the community. It is seen as political because it is comprised of politically elected through a political process by their nationals. A top down implementation approach has a legally compliant relationship among the organs of the organization that are obliged to implement the laws and policies adopted by the decision makers. The bottom up⁸⁴ approach sees the implementation phase carried out by a myriad of actors where there are many clearance points and power is devolved to local implementing agencies such as local non-governmental organizations and civil society organizations. A bottom up perspective is useful during the implementation of soft laws and agreements⁸⁵.

Negotiation cannot be said to be complete unless it has produced an agreement that the negotiating parties have a stake in implementing. In diplomacy, as in some other relationships, careful implementation of one agreement may be the starting point for the next negotiation. Saunders⁸⁶ believes that an agreement that has been negotiated and scrupulously implemented changes the political atmosphere and the international system as a whole in and make possible tomorrow what seemed impossible yesterday.

⁸³ EAC, *Dialogue on the East African Private Sector Development Strategy Proceedings of an EAC Workshop held on 22-23 June 2000*(Zanzibar, EAC, 2000)

⁸⁴ Ibid

⁸⁵ J.Tallberg., "Bargaining Power in the European Council" in *Journal of Common Market Studies*, Vol. 46 No. 3 (Blackwell, 2008) pp.685-708

⁸⁶ H.H Saunders, "We Need a Larger Theory of Negotiation: The Importance of Pre-Negotiating Phases" in *Negotiation Journal* (Sage, 1985) pp249-292

Throughout the implementation phase, meetings are held at regular intervals to evaluate the results of the agreements. The evaluation activities should be carried out in a participatory and independent manner that shows substantial commitment of both human and financial resources if the activities are substantial. The results of these evaluations should be compared and analyzed together⁸⁷. In a participatory evaluation process, one pertinent question asked is whether the objectives and common vision of the negotiation are actually achievable.

In the course of implementing activities, diverging interpretations of the agreements may surface. Also, during the implementation of an agreement reached after a successful conflict management negotiation, there could be a problem of re-entry of the conflict when the negotiators sell the agreement to their supporters and constituents, hence it becomes impossible to implement the agreements and treaties.⁸⁸ For this reason, the copies of the treaties, agreed minutes and other documents emanating from the negotiations provide some basic reference.

For the less formal agreements it is important to foresee in advance who will assist the parties to clarify entitlements and responsibilities and to mediate in the event of conflicts⁸⁹. It is also important that the process is not entrapped in some rigid and bureaucratic enforcement system. It often becomes clear during implementation that the effectiveness of an agreed course of action depends on specific changes in the country's policies and laws. These changes can be pursued by the parties to the negotiation.

⁸⁷ A.C Vigil, et.al (Eds.) Op.cit p72

⁸⁸ M. Mwangi, Op.cit p 115

⁸⁹ Ibid

The implementation stage opens up the structure of the negotiation process because it brings in many other actors who were not directly involved in the negotiation process⁹⁰. These parties are crucial to the post-negotiation phase because they help in implementation for example as financiers of the various processes, or as monitors and observers. This suggests that although these parties were not directly involved in earlier stages, some discussions and negotiations with them should have been going on⁹¹.

In the case of regional integration, implementation may involve civic education to enlighten the constituents on how they will be affected by the integration. There should therefore be a mechanism put in place by implementation team in case a party publicly misrepresents or makes statements inconsistent with the agreement to avert any negative repercussions. Otherwise, when one party misrepresents the agreement, the other party may do the same. Adequate time, money and personnel should be allocated for this to permit the monitoring of compliance with and enforcement of the agreement.

In essence, negotiation can be said to be effective if its pre-determined goals or objectives as set at the beginning of the negotiation have been achieved within the time limit set by the negotiators when they started. Effective negotiation means that there is factual representation and analysis of the issues at hand and an evaluation of the whole negotiating process with the aim of finding out if the process has helped or hampered the results sought⁹².

⁹⁰ M. Mwangi, Op.cit

⁹¹ Ibid

⁹² J. Kaufman (ed.), Op. cit pp54-56

CHAPTER 4: CRITICAL ANALYSIS OF THE NEGOTIATION FOR THE INTEGRATION OF THE EAST AFRICAN COMMUNITY 1996-2004

INTRODUCTION

This chapter gives a critical analysis of the negotiation for the integration of the East African Community during the period 1996-2004. Chapter two of this study gave a historical account of the evolution of the community into the organization that it is today. It explained in detail, the humble beginnings of the community in the early 1920s, its growth, the challenges that it faced that led to its collapse in 1977, and efforts to turn it to the establishment that it is today. In this chapter two major issues emerged: the efforts made to put mechanisms in place to operationalize its activities and in the long runs itself, and the participation of the civil society and the private sector in the integration process. In essence, the EAC was meant to be a people driven private sector undertaking hence the treaty agreements had to be operationalized by the stakeholders who include the private sector and civil society in the negotiation for the integration of the community.

Chapter three of the study focused on the theory of negotiation. The importance of negotiation in the integration process could not be overlooked. In the East African context, negotiation arose from the need of the partner states that had a common interest in maintaining cooperation to agree on what steps to take and in which direction to follow in their attaining their goal of an East African political federation. The issue that emerges here is the process of implementing the treaty as negotiated and agreed upon. This study discusses how these issues affect the negotiation process and the integration process of the East African Community.

Operationalization of the EAC

A new East African dispensation of partnership began when an agreement to revive cooperation in the region was reached¹. The leaders had to put in place checks and measures to ensure that the structural and systemic factors responsible for the collapse of the first establishment did not recur. In this regard, a committee of experts set out to identify spheres of common economic interests as the initial cooperation was on economic grounds. When the Permanent Tripartite Commission for the East African Cooperation was formed and the East African Cooperation formally launched in 1993², plans were underway to lay the foundation for cooperation in the region that would create permanent structures for the EAC, and making them operational. Experts were also to brainstorm over the functions of the new EAC. This meant that the states had to devise effective negotiation strategies through which negotiations would be held for any meaningful integration of the region. These efforts were aided by the change of leadership during in the 1980s and 1990s brought a new style of governance and perceptions of regional integration which in turn had positive results³. With the experience and lessons learned from the defunct EAC, the political leaders opted to follow a step by step integrative approach to negotiation for the integration of the region. By 1995 there was still no common East African customs tariff schedule and was using the Common Market for East and South Africa (COMESA) and Cross Border Initiative (CBI) trade regimes⁴.

In an attempt to operationalize the EAC treaty, the partner states held successive meetings which saw the continued cooperation among partner states with the hope of achieving the desired goal

¹ For further details see chapter 2 on the mediation agreement signed in 1984 p10

² For further details see chapter 2 on background of the community p 10

³ Interview of the researcher with Mr. G. Awuor, Director EAC Affairs, Ministry of Foreign Affairs, Government of Kenya held on 23rd August 2010

⁴ EAC, *Report on the 8th Permanent Tripartite Commission Meeting* held at AICC, Arusha August 1997.

of becoming a political federation. An operational treaty would mean negotiations are held for the arrangement of regional integration which would make it possible for all partner states to realize both internal and external growth through enhanced cooperation because it would have a positive impact on their economies⁵. The next few years would see the states negotiate over economic, political, defense, social and cultural issues. This has resulted in the signing of protocols, memorandums, agreements and establishment of institutions as guided in the treaty⁶ with the objective is to develop policies and programmes aimed at widening and deepening co-operation among partner states in political, economic, social and cultural fields, research and technology, defense, security and legal and judicial affairs, for their mutual benefit.⁷ However, Feng and Henna⁸ argue that the demand placed on states to integrate could be adverse on the domestic economy, because small states have in the past had a long dependency on trade within the umbrella of regional integration because of the lack of local resources. As a result, they tend to be highly vulnerable to any external economic shock and require highly adaptive decision-making systems.

The East African Community was built on several fundamental and operational principles⁹ that were to save the African people from poverty, disease and perennial conflicts in addition the reality around us. To this extent, the EAC is set to accelerate the integration process towards the Political Federation of the East African States. The Wako Committee of 2004 found out that the

⁵ Ibid

⁶ EAC, Establishment of the Organs and Institutions of the Community”, in EAC, *Treaty Establishing the East African Community* (Arusha, EAC, 2001)

⁷ EAC, *Overview of EAC Integration Process: A Public Relations Office Presentation to Visiting USIU Students on 14th March 2008* (Arusha, EAC, 2008) p12-13

⁸ Feng, Y., and G. Genna, “Regional Integration and Domestic Institutional Homogeneity: A Comparative Analysis of Regional Integration in the Americas, Pacific Asia and Western Europe” in *Review of International Political Economy* Vol. 10, No. 2 (Taylor & Francis, Ltd., May, 2003), pp. 278-309

⁹ EAC, *Treaty Establishing the East African Community*(Arusha, EAC Secretariat, 2002)

vast majority of East African favoured the idea of integration of East Africa. As a result, the committee recommended that an overlapping approach, to the process of integration be taken in order to fast track the integration of the region into a political federation, beginning with a customs union, the point at which the defunct EAC disintegrated¹⁰. It came up with development strategies in a bid to operationalize.

The first East African Co-operation Development Strategy (1997-2000) that was designed to make the EAC operational focused on the development of the policy framework for regional co-operation was designed to re-launch East African cooperation¹¹. The first step was to transform the agreement for cooperation into a treaty which would be less complicated to operationalize. Negotiations for this culminated in the signing of the Treaty for the establishment of the East African Community. High ranking government officials participated in these negotiations and were assisted by technocrats who were deemed as elitist, and regurgitated from the defunct EAC negotiations hence the result was a strategy that was merely a replica of the earlier one, with few amendments and elaboration of terms¹².

During the twelfth a permanent tripartite meeting on East African Cooperation in 1999 there was a consensus that all partners should gain from the trade regime in terms of increased trade and industrial development because trade imbalances within the region attracted a lot of debate with respect to the desire of becoming a customs union by 2004. There was need to accelerate harmonization of external tariffs to reduce the revenue gaps that may develop out of elimination or reduction of internal tariffs and an improvement in revenue collection from customs and other

¹⁰ EAC Secretariat, *Report Of The Committee On Fast Tracking East African Federation* (Arusha, EAC Dept. of Political Federation, 2007)

¹¹ EAC, *East African Co-operation Development Strategy 1997-2000* (Arusha, EAC Secretariat, 1996)

¹² Interview of the researcher with Mr. K. Wakamau , Deputy Principal Liaison Officer, Ministry of East African Community, Government of Kenya, held on 26th August, 2010

taxes.¹³ Dealing with these issues would translate to coming up with a standard acceptable and operational agreement or treaty that would enhance cooperation and integration of the region.

The Second East African Community Development Strategy (2001-2005) was launched in April 2001 was basically geared towards consolidation of the East African Cooperation culminating in the launching of the East African Customs Union with effect from 01st January 2005. This strategy focused on the implementation of selected regional projects and programmes; institutional development; and, most significantly, the launching in 2005 of the East African Community Customs Union¹⁴. For these goals to become a reality, the treaty provisions had to first be made operational in terms of creating awareness about the plans nationally and ensuring that they are carried out within the confines of the national constitutions.

To prevent the EAC from a second disintegration, operationalization was necessary. It provided for the legal framework to be put into place. Early attempts at operationalizing the East African Community treaty saw the three partner states adopt a common passport and flag, upgrading the cooperation agreement to a treaty which would establish a common market and a monetary union and also in the long run, a political federation. Other efforts at operationalizing the EAC include reaching an agreement over the timetable and scale of tariff-barrier reductions within the new economic grouping to be negotiated over a period of four years, how best to share the benefits of common investment and services, and how to increase intra-regional trade to harmonize their fiscal and monetary policies set out rules of procedure for admission of foreign states into the EAC, protocol on standardization, quality assurance, meteorology, testing, combating illicit drug

¹³ EAC, *A Report of the 12th Permanent Tripartite Commission Meeting* held at AICC, Arusha in 1999

¹⁴ EAC, *"A Report on the Emerging East African Federation And Its Implications for Civil Society, Governance and Accountability, Particularly in Tanzania"* held on 27th January 2006 (Dar Es Salaam, Policy Forum , 2006)

tracking in East Africa, movement of persons- rationalize, harmonize-best handled through institutional framework by committees based on inter-linkages and necessary synergies among other technical and structural issues¹⁵.

With the inception of the East African Legislative Assembly (EALA) and the East African Court of Justice (EACJ) in 2001 it was hoped that the operationalization process would be boosted particularly in the execution of mandates in implementation of the treaty¹⁶. Operationalization is an expensive exercise that the community was not able to cater for singlehandedly and therefore, they maintained contacts with development partners for example, World Bank, International Development Research Centre (IDRC), Fredrich Ebert Foundation, Joint Integrated Assistance Program (JIAP), and Department for International Development (DFID)¹⁷. The EAC Council of Ministers came up with a protocol on decision making¹⁸ that was aimed at streamlining the manner in which decisions were taken. This protocol placed the EAC on the same platform as other regionally integrated bodies such as the European Union that had a predictable way of carrying out their operations. This is important because the institution would like to be regarded as relevant and a rational actor in the international arena.

There were many rounds of negotiations held before the EAC could be operationalized. After agreements were concluded their components contributed in making them particularly durable for regional integration. The operationalization process is still ongoing because the community has

¹⁵ For further details, see chapter 2 on background of the study p 13-14

¹⁶ EAC, *Report of the 1st Meeting of the Council of Ministers of the East African Community* held in AICC, Arusha, 1999 p4

¹⁷ Ibid p62

¹⁸ EAC, *Protocol on Decision Making by the Council of Ministers of the EAC*(Arusha, EAC Secretariat, 2000)

not achieved its ultimate desire of the region. It is hoped that as the process continues, the quality of the agreements enhances integration. If the EAC is able to address the pertinent issues of the region in such way that the partners can live recognize and cooperate with one another within the agreed framework and even develop jointly through integration, then it will be said to have been done in a sustainable manner.

Participation civil society organizations and other non-state actors in the negotiation process

Oloka-Onyango¹⁹ suggests that regional integration today is hinged on non state actors who have played a key role in giving the historic drive towards regionalization a truly local rationale and historical impetus. In this regard, regional integration should be viewed from a fresh but decisive angle beyond simple state-centric notions of the yester-years. A study of the integration process of the East African Community for example shows a democratic dispensation in the relationship between civil societies, the private sector in partner states and the community that is essentially a process of deepening its political integration²⁰.

As stated earlier the revival of East African Cooperation saw the formation of the Permanent Tripartite Commission (PTC) in 1993 deliberated and negotiated on the way forward for operationalizing and implementing the treaty establishing the EAC. This commission comprised of the Ministers of Foreign Affairs of the partner states and technocrats from various fields of the economy, who were mainly drawn from the private sector and Civil Society Organizations (CSO). They would hold meetings to negotiate on issues of cooperation for example matters to

¹⁹ E. Oyugi, "The Challenges of Integration East African Community: A People, Market or State-Driven Regionalization Project" in *Pambazuka News* 2010-06-03, Issue 484

²⁰ Interview of the researcher with Mr. A. Githaiga, Senior State Counsel, Ministry of East African Community, Government of Kenya, held on 25th August 2010

do with cooperation in economic factors and development, cooperation in services, other social matters, and science and technology and cooperation in political matters and international affairs²¹.

Since then, the inclusion and role of the civil society and the private sector is an issue that has gained increased attention in recent negotiations for integration. Their inclusion in the integration process of the EAC has been provided for in the treaty establishing it²² and viewed as a means through which the negotiation for integration and the integration process as a whole would be people centered. These groups would be co-opted into the operationalization of the institution and the implementation of the provisions arrived at during negotiations. Some of the private sector organizations involved in the negotiations for integration are East African Business Council (EABC), East African Law Society (EALS), East African Trade Union Council (EATUC), East African Informal Sector Organization (EAISO), East African Youth Council (EAYC), and Joint Research Council for East Africa (JRCEA), and East African Tourism Council (EATC). The growth of the private sector increases importance for development shows private sector responsiveness to enabling environment for wider socio-economic space being created by EAC and reinforced by East African private sector development strategy.²³

In the defunct community, only high representatives of the parties had access and knowledge of the negotiation process²⁴. This type of silent negotiation was seen as dictatorial and retrogressive during implementation as it was viewed as a top-down²⁵ process that is deemed to be one of the

²¹ Ibid

²² EAC, *Treaty Establishing the East African Community* (Arusha, EAC Secretariat, 2002) chapter 25 Article 127-129

²³ EAC, *Dialogue on the East African Private Sector Development Strategy Proceedings of an EAC Workshop in Zanzibar on 22-23 June 2000*, p5

²⁴ Interview of the researcher with Amb G. Awour, Op.cit

²⁵ For further details see chapter two, conditions for effective integration p.45

reasons for the disintegration of the community. Later on during the period of cooperation that led to the establishment of the new community, it was agreed that negotiation and decision making would take a bottom up approach²⁶ in order to avoid the past mistakes made in the previous community. Involving the civil society, private sector and other non- governmental organization groups in the negotiation for integration enhances transparency in the process on two levels²⁷. First, their involvement means that the participants in the talks, the schedule of meetings, the issues under debate, the positions of the parties and other significant matters are known to the public. Second, when an agreement has been signed in the presence of the civil society transparency in the process is enhanced. Civic education and dissemination of information about it as well as education on how the agreement will benefit the citizens in the region should then be explicitly done.

In general however, having civil society organizations too much engaged in the negotiations could not only affect their neutrality but also weaken their position as societal watchdogs in implementation process. The civil society also plays a role as a pressure group and a monitor of the implementation of agreement provisions, although in the end, the responsibility for carrying out the agreement rests with the partner states²⁸. Kappeler²⁹, Oloka-Onyango³⁰ and Mwangiri³¹ argue that it is important for the negotiators to consider is whether the issues under negotiation should also be published even as the talks continue. However this may affect the long term durability of the agreements that in the end affect the entire society.

²⁶ Ibid

²⁷ P. Wallensteen and M. Eriksson. *Negotiating Peace: Lessons from Three Comprehensive Peace Agreements*, (Uppsala, Uppsala University Press, 2009) p 27

²⁸ Ibid

²⁹ D. Kappeler, M. Mwangiri, & J. Odera, *Diplomacy: Actors, Rules and Process* (Nairobi, Mimeo, IDIS, UoN, 1994)

³⁰ Oloka-Onyango. Op.cit

³¹ M. Mwangiri, *Diplomacy: Documents, Methods and Practice* (Nairobi, IDIS, 2004)

Many of the projects and activities undertaken are claimed to be successful because of the inclusion of these two groups, for instance, the EAC development strategies are largely viewed as successful because of the inclusion of Civil Society Organizations (CSO) in the formulation of policies and also in decision making and implementation of the same. However, these development strategies may not have fully produced the desired outcome. One of the reasons for this is because the dissemination of information to the general public such that quite a large number of the population is still unsure of the benefits of the envisioned political federation and why the need to fast track the integration process³².

During the eighth PTC meeting the private sector was identified as the engine of economic growth in the region³³. The East African Community was therefore expected to facilitate and involve private sector in its integration efforts, beginning with the plans of creating a customs union. The East African business community was allowed to make use of newly created court of justice, the East African Court of Justice (EACJ) for settlement or arbitration of commercial disputes. The community was also required to involve media in seminars to raise awareness of development strategy and customs union protocol. The involvement of non- state actors enhanced further the EAC secretariat efforts of promoting and disseminating information on community to the stakeholders, the general public and the international community³⁴.

A major concern in the integration process in the East African region is coming up with mechanisms for interpreting into practice, the concept of a private sector led regional integration

³² J. Oloka-Onyango, "Who Owns the East African Community?" *A Presentation on the East African Community*, (Kampala, DENVIA 2005)

³³ EAC, *Report on the 8th Permanent Tripartite Commission Meeting*, Op.cit

³⁴ EAC, *Report of the Contacts and Outreach Activities of the EAC Secretariat for the period Jun-Aug 2004* (Arusha, EAC Secretariat, 2004)

and development³⁵. Initially partnerships had been forged between national governments and the private sector with the aim of creating a business environment which is predictable and sustainable such that it imparts the confidence that is required in the negotiation and decision making process³⁶. It has been suggested that the competitiveness of the region should be increased in order for the region to stand a chance of participating as a major entity on the world stage³⁷.

Basically, the private sector drives regional integration because it is through it that economic development is possible by providing opportunities for trade and provision of services. However to be more effective, it needs to gain more control and participation in EAC decisions so as to have a more lasting impact in the making a viable durable and sustainable regional economic set up³⁸. A consortium approach that increases the capacity of non-state actors to provide some of the services in the hands of the public sector and mobilization of external financing for infrastructure is a way of ensuring that the non-state actors remain relevant in the negotiation process³⁹. This automatically develops a mechanism to address regional imbalances within the region arising from uneven growth and development. Non-state actors advocate for functional relationships that are guided by joint fact finding, brainstorming, problem solving and decision making which facilitates a consolidation of gains in related and unrelated areas of primary concern including conflict resolution peace and security in and around the region⁴⁰.

³⁵ Ibid

³⁶ Interview with Mr. A. Githaiga, Op.cit

³⁷ S. Miliorisi and P. Kiribiti., "Increasing competitiveness of East Africa" in EAC, *Dialogue on the East Africa Private Sector Development Strategy proceedings of an EAC Workshop held in Zanzibar on 22-23 June 2000* (Arusha, EAC Secretariat, 2000)

³⁸ Ibid

³⁹ Ibid

⁴⁰ Interview of the researcher with Amb G. Awuor, Op. cit

Implementation of the treaty establishing the EAC

A lot can be said about the negotiation process for the integration of the East African Community, the substance of which is the driving force behind the sustainability and success of the institution. The negotiation process began when the country position was made, often the stakes were raised at the table, it was expected that there would be some harmonization of the positions which would allow for cooperation such that each party felt that it had gained and also protected its national interest⁴¹. Negotiation tactics were also used such as quiet negotiation during breaks, taking group positions and so on. Many workshops and seminars have been held with regards to mapping out strategies for implementation of the treaty and other agreements and sensitization on the efforts taken by each state towards integration. The partner states often floated their country position then the others held plenary discussions about the position in attempt to reach a consensus on the way forward.

During the preparatory phases of the negotiation process, for the revival of the East African Cooperation the negotiators examined previous agreements in integration of defunct community and integrate lessons into efforts to re launch the community in order to avoid past mistakes⁴². A high level team of technocrats⁴³ was commissioned as the Permanent Tripartite Commission to look into the areas in which cooperation between the partner states can be revived and they deliberated on the past experiences and future prospects for the community, with a view to gauging the viability of reviving the community. The agreements arrived at here would then be submitted as proposed agreements to the Foreign Affairs Ministers who would then negotiate

⁴¹ For further details see chapter one, statement of the problem p 4

⁴² For further details see chapter two on revival of the community p 35

⁴³ For further details see section on participation of the civil society and other non-state actors in this chapter

further on the same issues. Any amendments on the proposals would be made then another round of negotiations held in a bid to arrive at a consensus. At this stage, the negotiation would take a political twist as the parties employ different strategies in a bid to protect their national interests⁴⁴.

Once it was deemed viable, it was presented to the summit of heads of states that which would either accept or reject it. If accepted, the type of treaty that would suit the region and put in place development strategies to inform the integration process. Decision making and implementation took the top-down approach⁴⁵. This move is progressive in nature because no new establishment or institution was to be created. It was merely revamping a previously existing one, all the while trying to avoid past mistakes. The procedures used in the negotiation process were also those that were previously hence, hardly anything new came out of the process. However, subsequent negotiations were more inclusive in terms of representation of private sector, business community and civil society with a call made to further increase the participation of women in negotiations which constitutes a bottom-up approach⁴⁶.

The implementation of the provisions of the treaty and the decisions reached during negotiations was to be done in phases. This step by step or gradual approach to integration was misconstrued by skeptics who felt that the integration process was slowly grinding to a halt. Indeed there had been numerous postponements in the negotiation of several critical issues concerning the integration like the implementation of zero tariff regimes, elimination of tariff and non-tariff barriers, full implementation of customs union protocol among other issues⁴⁷. In addition, the

⁴⁴ Interview of the researcher with Amb G. Awuor, Director EAC Affairs, Ministry of Foreign Affairs, Government of Kenya held on 23rd August 2010

⁴⁵ J. Tallberg, Op.cit

⁴⁶ For further details see chapter two on the revival of the community p34

⁴⁷ Ibid

time schedules and parameters that had been agreed upon were not being met. This trend was bound to lead to adverse effects in pursuit of the objectives of the community and thus, tensions were heightened⁴⁸.

It took the Wako Commission to reassure the world that the East African integration was still on course. The commission came up with a report that recommended a fast-tracking of the integration process that would see the region federating as early as 2015. This report marked the commencement of intensive and extensive negotiation for the implementation of the treaty to allow for the political federation. This created a need for a carefully designed agreement, resulting in a trade-off between those for an overlapping approach to political federation and those for a gradual systematic approach⁴⁹. Those for the overlapping approach saw the federation as urgent while those for the gradual approach were concerned with agreement details. There had to be a trade-off between the two for effective negotiation and subsequent implementation of the treaty provisions to take effect⁵⁰. Those for the fast tracking used this urgency as leverage against those that were a little hesitant, who in turn had to settle the issues they had, using the operational principles⁵¹ provided for in the EAC treaty as a way satisfying their apprehensions. Article 8: 4 of the EAC treaty allows for national laws to override EAC law in areas where the states feel would threaten their sovereignty and this is thus treated as human urgency.

The discrepancy between national interest and international responsibility and cooperation brings about a potential clash during the implementation phase of an agreement. The EAC's treaty article 8:4 states that the community's organs, laws and institutions shall take precedence similar

⁴⁸ EAC. *Report of the 1st Council of Ministers Meeting held in AICC Arusha on January 8-13 2001* (Arusha, EAC Secretariat, 2001) p13

⁴⁹ Interview of the researcher with Mr. K. Wakamau, Op. cit

⁵⁰ Ibid

⁵¹ EAC, *Treaty Establishing The East African Community* (Arusha, EAC Secretariat, 2002)

national ones on matters pertaining to the implementation of the treaty⁵². This is still a subject of debate where states are not ready to cede their sovereignty to the community hence national law often supersedes the institutions law. Tanzania had been accused of stalling the implementation of the customs union particularly on the matter of free movement and establishment of persons⁵³. The process only progressed when the other states came to a consensus about national laws superseding the EAC treaty⁵⁴. Tanzania among other reasons sought to protect the security of its citizens as well as its territory which are part of its national interests. However if the parties were to resort to international principles negotiations would move forward faster as many issues would be easily incorporated in the final agreement⁵⁵. The fact that for the East African states are not ready to let the EAC treaty laws supersede their national laws and consequently regional interests override national interests is evidence that the world may not be ready for a one world government as envisaged by the EU style political federation adopted by EAC because of the principle of state sovereignty hence the Westphalian style of statehood is here for a while to come.

Implementation of the treaty provisions and other decisions of the community continue to be guided by the areas that would otherwise have been an obstacle to the integration process. For instance, the principle of asymmetry recognizes the need to address imbalances in the process of integration. On the other hand, the principle of variable geometry allows for progression in cooperation among groups within the community for wider integration schemes in various fields and at different speeds⁵⁶.

⁵² Ibid

⁵³ See chapter two see also three EAC, Development Strategy (1997-2000)

⁵⁴ Interview of the researcher with Amb G. Awuor, Op. cit

⁵⁵ Ibid

⁵⁶ See treaty establishing the East African Community

The implementation of treaty provisions had not been very effective in the past because of several reasons. During the period of cooperation, the East African Cooperation focused attention on the need to identify programmes through the sectoral meetings and expert studies. The PTC acknowledged that although it has convened and facilitated meetings in almost all identified tripartite programmes, little attention was paid to the implementation of cooperation because it concentrated more on identification of areas of cooperation⁵⁷.

After the revival of the community, there were efforts to implement the treaty, but they were met with skepticism and reluctance from various quarters attributed to the historical mistrust⁵⁸. The development strategies (1997-2000) and (2001-2005) were not fully implemented as a result. The basic principle of the first development strategy was mainly to guide the partner states in the process of concretization of the goal of regional integration and development. Its priority programmes were to make the East African Cooperation operational and this was presented as a policy action matrix.⁵⁹ Implementation of the agreements would have required capacity building which was deemed too expensive to carry out without financial assistance from donors. Therefore the Permanent Tripartite Commission saw it fit to establish contacts with development partners and to seek recognition from them and other regional and sub-regional organizations⁶⁰. Negotiation for funding of projects was with World Bank (WB) and United Nations Development Programme (UNDP), Commonwealth Fund for Technical Cooperation (CFTC), European

⁵⁷ EAC, *Report on the 6th Permanent Tripartite Commission Meeting, 6th December 1996 at AICC, Arusha* (Arusha, EAC Secretariat, 1996) p 68

⁵⁸ For further details see chapter two on background of the East African Community p 30

⁵⁹ EAC, *Development Strategy for the East African Cooperation 1997-2000* (Arusha, EAC Secretariat, 1997)

⁶⁰ Interview of the researcher with Amb G. Awuor ,Op.cit

Commission (EC) and delegates of Japan External Trade Organization (JETRO), among other development partners and donors⁶¹.

The second development strategy put in place guidelines for the implementation amid many challenges. The first council of ministers meeting acknowledged that progress was being made albeit slowly because of time lag in processing to reflect treaty through technical working groups and committees, limited capacity at secretariat to provide effective project backup, slow response by partner states, frequent rescheduling of meetings of policy organs which delay resolution of issues which arise during project preparation and implementation and international tendering requirements which vary from one financier to another⁶².

During this period many agreements were still subject to negotiation because they were not yet implemented. These include a consensus on recommendation to subject zero tariffs on sensitive products, implementation of a customs union and establishment of the common external tariff involving harmonization of external tariff, EAC trade regimes⁶³. Areas that were problematic for the states to implement are the tariff and non tariff barrier elimination, harmonization of standards of goods Harmony in monetary affairs including banking laws, money laundering, capital accounts, monitor private sector debt, single currency vision and defense⁶⁴. Funding was also a major bottleneck in the implementation of the treaty provisions. This required coordination

⁶¹ EAC, *Development Strategy for the East African Cooperation 1997-2000*(Arusha, EAC Secretariat, 1997)

⁶² EAC, *Report on the 1st Council of Ministers Meeting held at AICC Arusha January 8-13 2001*(Arusha, EAC Secretariat, 2001)

⁶³ N. Ndung'u "Regional Experience in East Africa" in Goldstein. A., and N. Ndung'u, *Regional Integration Experience in the East Africa* (Paris: OECD Development Centre, March 2001) pp46-61

⁶⁴ Ibid

with other regional economic communities and negotiation for funding for programs with other regional economic communities⁶⁵.

Effective implementation of the treaty calls for far reaching reforms of the organs and institutions of the EAC and co-alignment of all national strategies and strategic plans with regional ones. This is because for effective implementation, there has to be a convergence of strategic planning by all the partners following specified criteria. The ideal criteria would be based on agreed regional macro-economic framework as well as the regional policies and regional plans for each sector which is an important precondition for deepening and accelerating integration⁶⁶.

Implementation ought to be participatory with each stakeholder having clear roles to perform⁶⁷. A proposed implementation strategy is one that would involve a number of stakeholders: EAC Secretariat, regional level institutions, national level government departments and public sector organizations, private sector organizations and enterprises. In order to coordinate these groups, and ensure effectiveness of the proposed reforms, a special unit could be established in the EAC secretariat, to perform this task. Similarly, public awareness campaigns to enhance the spirit of regional co-operation, to significantly improve the public image of the EAC and to create widespread understanding and support for EAC institutions by highlighting opportunities and addressing constraints affecting performance in various sectors is essential. This reduces information gaps within the EAC framework, and empowers stakeholders through a people centered campaign. Finally monitoring and evaluation of the whole process through detailed

⁶⁵ EAC, *Report on the 11th Meeting of the Council of Ministers held in AICC, Arusha* (Arusha, EAC Secretariat, 2002)

⁶⁶ Interview of the researcher with Mr. K. Wakamau, Op.cit

⁶⁷ Ibid

work plans; monitoring work sheets; report guidelines; evaluation guidelines and creation of an East African statistical database is necessary.

The formation of the East African Customs Union was seen as a necessary step towards translating provisions of the Treaty into economic opportunities for the East Africans particularly because the current global trend expects trade negotiations to be carried out under regional blocs.

The EAC Customs Union will assist to level the playing field for the region's producers by imposing uniform competition policy and law, customs procedures and external tariffs on goods imported from third countries, which should assist the region to advance its economic development and poverty reduction agenda⁶⁸.

⁶⁸ EAC. *Benefits of EAC Customs Union*, (Arusha, EAC Secretariat, 2004)

CHAPTER 5: CONCLUSION

INTRODUCTION

This study sought to find the relationship between negotiation and integration by analyzing the negotiation process for the integration of the East African Community during the period 1996-2004. This final chapter of the study shows the extent to which its objectives were achieved and to confirm or disconfirm the hypotheses.

The period 1996-2004 is important as it is the time when efforts to revive cooperation and integration in the East African region began in earnest. The study traced the negotiation for integration from the early 1990s where negotiation was still the prerogative of the state to the time when the negotiation process was devolved to include non-state actors such as the private sector and civil society organizations in an attempt to make the integration of the region people centered, such that the citizens own the process and the community¹. The first East African Community was once perceived as an ingenious arrangement² that had the potential to elevate the lives of its citizens, but it collapsed after only ten years.

East African regional integration is viewed as strategic and important from both a regional and continental perspective because of its large market (the region's population was 90 million people) and vast natural resources (minerals, wildlife and availability of labour and land resources). In order to maximize the gains from investments in the region by the rest of the world, there was need for integration of the region. There was need to integrate so that the region

¹ For further details see chapter four on the participation of civil society and other non-state actors in the negotiation process, p 78

² J. Nye, 'East African Economic Integration' in *Journal of Modern African Studies*, vol.1 No.4, Dec. 1961 p 475-502

could take advantage of the economies of scale in the exploitation of development opportunities, to protect and expand internal markets through harmonization of internal tariffs and adoption of common external tariffs, conserve cultural heritages, promote common projects in trans boundary issues such as environment, security, infrastructure, tourism, energy, water resources etc. . to face the new world order together in international trade negotiations, such as in WTO and in order to take common positions in international issues such as at the UN³.

Regional integration is therefore a necessity in order to create large more viable stable and economically sensible blocs to save the African people from poverty, disease and perennial conflicts in addition the reality around us is that deeper regional integration has become necessary for sustained economic survival the world over⁴. To this extent, the EAC is set to accelerate the integration process towards the political federation of the East African States. After the disintegration of the EAC, other regions in Africa began forming regional blocs⁵ such as PTA/COMESA, ECOWAS, and SADC. Secondly, the globalization that was taking place in the world saw other regions of the world prefers to invest and deal with Africa as regions and not individual states because of the promise of higher returns. The East African region was lucrative as a region so the leaders at the time opted to re-unite so as to benefit from these investments as opposed to non-investment that would arise if they were apart. Negotiation made it possible for the partner states to open up the region to the outside world, but most importantly for the residents of East Africa who were the primary beneficiaries of the customs union.

³ EAC Secretariat, *Present and Future Trends in the East African Community* (Arusha, EAC Secretariat, 2008)

⁴ P. Anyang' Nyong, "Regional Integration in Africa: An Unfinished Agenda", in P. Anyang' Nyong', (ed.) *Regional Integration in Africa: An Unfinished Agenda* (Nairobi, Academy Science Publishers,1990) pp1-13

⁵ N. Ndung'u, "Regional Experience in East Africa" in Goldstein, A., and N. Ndung'u, *Regional Integration Experience in the East Africa* (Paris: OECD Development Centre, March 2001) pp46-61

Learning from the experience of the defunct community the leaders at the time had to put in place checks and measures to ensure that the new establishment does not suffer the same fate⁶. The driving force behind the need to negotiate came about as a result of the desire for unity⁷. Hence, they agreed to hold negotiations to iron out the contentious issues. The process of negotiation began in 1984 and intensified in the 1990s with several rounds of protracted negotiations being held. Further negotiations saw the community formulate development strategies that were meant to fast track integration of the region⁸, hence on 31st December 2004, the East African Customs Union was officially launched⁹. The study found that negotiation for the integration of the East African Community is important because it facilitates consensus building and allows the partner states to enhance cooperation without which there would be an imposition of laws that would leave people disgruntled and apathetic.

In its analysis of the negotiation process for the integration of the community, the study found that there was intense lobbying and preparation carried out by a Permanent Tripartite Commission in conjunction with technocrats who did the ground work on the preparation and operationalization of the treaty establishing the East African Community¹⁰. During the period 1977-1991 there was a vacuum created with regards to cooperation although quiet negotiations that resulted in bilateral agreements amongst the states continued. Overt negotiation began after this and with it came protocols, memoranda of understanding and other forms of agreements that required implementation. The efforts made towards their implementation show the importance of negotiation in the revival of the East African Community because but for negotiation, there

⁶ For further details see chapter two on revival of the community, p 35

⁷ Ibid

⁸ For further details see chapter four on implementation of the treaty, p 84

⁹ MEAC, *Policy Brief on EAC Customs Union*, 4th January 2004

¹⁰ For further details, see chapter four on Operationalization of the EAC, p 72

would be no integration in East Africa. Negotiation made cooperation and integration smoother and more coherent such that it was possible to pick up from where the previous establishment left off¹¹, and to re- launch the EAC as a customs union the point at which it disintegrated in 1977.

The guiding fundamental and operational principles that were negotiated and incorporated into the treaty establishing the EAC is a very important move towards integration in that they aid both negotiators and implementation teams in their respective tasks. These principles also guide partner states in their behavior towards domestic matters and also on issues that have bearing to the cooperation. It should be noted that given the different levels of economic development of the three states', implementation of the projects under the treaty has to be based on clearly stated principles such as the principle of asymmetry¹², principle of complementarity¹³, principle of variable geometry¹⁴ and principle of subsidiarity¹⁵. Any attempt to implement the Treaty in a bid to achieve the objectives of the Community under the treaty should not lose sight and spirit of the fundamental principles and operational principles. It is against these principles that operations of the Community can be measured.

With the implementation of the treaty set in place, it is indeed expected that the new EAC will outlast the previous outfit because the mistrust that exists has been greatly reduced there is a

¹¹ EAC Secretariat, *Report Of The Committee On Fast Tracking East African Federation* (Arusha, EAC Dept. of Political Federation, 2007)

¹² Principle of asymmetry means the principle which addresses variances in the implementation of measures in an economic integration process for purposes of achieving a common objective

¹³ Principle of complementarity means the principle which defines the extent to which economic variables support each other in economic activity. measures in an economic integration process for purposes of achieving a common objective

¹⁴ Principle of variable geometry means the principle of flexibility which allows for progression in cooperation among a sub-group of members in a larger integration scheme in a varieties of areas and at different speeds

¹⁵ Principle of subsidiarity means the principle which emphasises multi-level participation of a wide range of participants in the process of economic integration.

mechanism in place to control or limit the mistrust for example the partner states can revert to national law to override the treaty in matters the states feel uncomfortable implementing e.g. right of establishment. In addition the fact the rest of the world is going regional is a selling point for the longevity of the community.

Negotiation ensures that regional institutions and structures are kept intact and that leaders and other stakeholders in the region are allowed to partake in the integration. The current leaders in East Africa are working together to sustain the EAC through negotiation¹⁶. However there is no guarantee that their predecessors will follow suit. This remains one of the key challenges regarding the future of the new EAC. Therefore as a preventative measure, the leaders should ensure that the spirit of brotherhood is instilled amongst the people not just the leadership as a means of sustaining cooperation even after new leaders take over.

Negotiation ensures protection against the integration process leading to blocs that are fortresses where trade diversion in terms of competitively lower cost imports from third parties are displaced, becomes the dominant feature rather than trade creation¹⁷. The comprehensive negotiations that took place for the integration of the EAC will enable it to be a competitive diverter where and when it promotes competition and develops the infrastructures (energy, roads, railways, telecom, civil aviation, ports and harbors) that unlock the supply-side constraints for improved production and achievement of higher levels of productivity. Integration becomes

¹⁶ For further details see chapter two, revival of the community p. 35

¹⁷ Y. Feng and G. Genna, "Regional Integration and Domestic Institutional Homogeneity: A Comparative Analysis of Regional Integration in the Americas, Pacific Asia and Western Europe" in *Review of International Political Economy* Vol. 10, No. 2 (Taylor & Francis, Ltd., May, 2003) pp. 278-309

synonymous with development when these economic objectives are focused upon and implemented¹⁸.

Regional integration clearly enhances the scope and leverage of negotiating power at the global level. This is the reason why the WTO last year described the EAC as the most successful illustration of regional integration in Africa. The working Customs Union has leveraged this position and the accolades showered upon it because it ensures a coordinated trade policy, with a well structured and operating CET have bolsters collective strength vis-à-vis third parties¹⁹. Moreover, the growth of an enlarged market acts as a spur for promoting EAC investments and attracting FDI. Negotiation of better terms of trade in the region will safeguard against the Customs Union and later the Common Market leading to a fortress EAC where trade diversion, in other words, competitively lower cost imports from third parties are displaced, becomes the dominant feature rather than trade creation²⁰.

All in all the study confirmed all its hypotheses based on the information gathered. Indeed, regional integration is necessary for the East African region. The East African Community was designed to be a people- centred institution that improved the quality of life for the citizens of the region by provision of among other things, better services. This was facilitated and made possible through negotiation. Negotiation is therefore paramount if there is to be any meaningful integration.

¹⁸ EAC, *East African Co-operation Development Strategy 1997-2000* (Arusha, EAC Secretariat, 1996)

¹⁹ E.J Omotunde, "Economic Integration in Africa: Enhancing Prospects for Success" in *Journal of Modern African Studies*, Vol. 29, No. 1 (Cambridge University Press, Mar., 1991) pp. 1-26

²⁰ Ibid

APPENDIX

Structured Questionnaire

1. What were the positions held by the partner states before the start of the negotiations to revive the East African Community?
2. What was the driving force behind the decision to negotiate for the integration of the East African Community?
3. Who were the actors /participants in the negotiation talks? What were their contributions to the process?
4. Briefly describe the process that was used in the negotiation.
5. What issues were negotiated? How did the negotiators deal with conflicts and disagreements during the negotiations?
6. How did the negotiation process affect the integration of the region and the revival of the East African Community? Did it aid the integration process or make it more difficult?
7. What are some of the agreements reached during the negotiations? How were they to be implemented? Were the negotiations conclusive enough to ensure the EAC outlasts the previous one?

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