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**“NATIONAL INTERESTS AS A CONSTRAINT TO REGIONAL
INTEGRATION: A CASE STUDY OF KENYA IN THE EAST AFRICAN
COMMUNITY”**

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TABLE OF CONTENTS

Declaration.....	i
Abstract.....	ii
Abbreviations.....	iii
Acknowledgement.....	iv
CHAPTER 1 INTRODUCTION	
1.1 Background Information.....	1
1.2 Problem Statement.....	3
1.3 Objectives.....	6
1.4 Justification of the Study.....	6
1.5 Literature Review.....	7
1.5.1 Introduction.....	7
1.5.2 National Interests in the Defunct EAC.....	8
1.5.3 The Revival of EAC.....	11
1.5.4 The Implementation of EACU.....	12
1.5.5 National Interests in the EU.....	19
1.5.6 National Interests in NAFTA.....	22
1.5.7 Conclusions.....	26
1.6 Theoretical Framework.....	27
1.7 Hypothesis.....	30
1.8 Research Methodology.....	30
CHAPTER 2 THE HISTORY OF EAC	
2.1 Pre-Colonial Societies and Integration.....	33
2.2 Colonialism and Integration.....	34
2.3 Independence and Integration.....	41
2.4 The Revival of EAC.....	48
2.5 The Structure of EAC.....	53
2.6 Conclusion.....	55
CHAPTER 3 HOW THE EAC TREATY ADDRESSES NATIONAL INTERESTS OF THE PARTNER STATES	
3.1 Introduction.....	57
3.2 The Principle of Asymmetry.....	57
3.3 The Principle of 'Subsidiarity'.....	61
3.4 The Principle of Variable Geometry.....	62
3.5 Settlement of Disputes.....	63
3.6 Decision Making Processes.....	64
3.7 Legislation.....	66
3.8 The Summit.....	68
3.9 Withdrawal, Suspension and Expulsion of a Member.....	69
3.10 Conclusion.....	70
CHAPTER 4 KENYA'S NATIONAL INTERESTS IN EAC: A CONSTRAINT TO THE INTEGRATION PROCESS	
4.1 Introduction.....	71
4.2 Kenya's National Interests in EAC.....	72
4.3 Conclusion.....	84
CHAPTER 5 FINDINGS, CONCLUSIONS AND RECOMMENDATIONS	85
BIBLIOGRAPHY	90
INTERVIEW SCHEDULE	99

Declaration

I Joyce Kariuki hereby declare that this research project is my original work and has not been presented for a degree in any university.

Signed.....Kariuki.....Date.....25th Nov 2008.....

This project has been submitted for examination with my approval as University Supervisor:

Signed.....Kariuki.....Date.....25/11/08.....

ABSTRACT

This study takes cognizance of the fact that regional integration is a necessity and not a choice for the survival of East Africa's small national economies in the contemporary globalization era. It argues that the convergence of national interests of the East African countries led to the formation of the defunct EAC (1966-1977) but countries also have divergent interests which are pursued concurrently; this led to the collapse of EAC (1977).

It traces historical efforts at integrating East Africa since pre-colonial times to the revival of the new EAC, explaining the changing nature of socio and economic relations. A general look at national interests of Partner States in EAC, and a specific look at Kenya's national interests in EAC show that these interests constrain the EAC's integration process in various ways. This study further argues that Kenya's pursuit of her national interests constrain the integration process.

The study also looks at how the EAC treaty (1999) addresses the issue of national interests. In the renewed effort toward integration in EAC, emphasis ought to be laid on the national interests of the Partner States; the diverse national interests should be harmonized with the community's interests. The regional policies should therefore integrate the diverse national interests of the Partner States for an effective and successful EAC integration. The treaty (1999) has not clearly dealt with the issue of national interests and a review of the treaty is therefore necessary.

ABBREVIATIONS

AD	Anti-dumping Laws
CAP	Common Agricultural Policy
CET	Common External Policy
COMESA	Common Market for Eastern and Southern Africa
CVD	Countervailing Duty
EAC	East African Community
EACJ	East African Court of Justice
EACU	East African Customs Union
EADB	East African Development Bank
EAHC	East African High Commission
EAI	Enterprise for the American Initiative
EALA	East African Legislative Assembly
EACSA	East African Common Services Authority
EACSO	East African Common Services Organization
EC	European Community
ECB	European Central Bank
ECSC	European Coal and Steel Community
EMU	European Monetary Union
EU	European Union
KADU	Kenya African Democratic Union
KANU	Kenya African National Union
KRC	Kenya Railways Corporation
NAFTA	North American Free Trade Area
NBI	Nile Basin Initiative
NTB	Non-Tariff Barriers
RVR	Rift Valley Railways
SADC	Southern African Development Community
US	The United States of America

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CHAPTER ONE

1.0 INTRODUCTION

1.1 Background Information

State relations is an old phenomenon that has characterized the human society for long. Plato compared the state to a human being. Just like the human being, who cannot exist in isolation and who has interests, ambitions, choices, greed and deliberations, so is the state. States therefore need other states to survive and are driven by certain interests to relate with other states.

State interactions and co-operations are influenced by geographical and political factors, levels of economic growth and development, shared natural resources among others. However, besides these factors states relate to pursue and acquire national interests through foreign policy. Foreign policy has been defined as the means through which a state's national interest is pursued and acquired; it is thus a calculated response to external challenges¹ and the objectives of any foreign policy can be divided into self preservation, security, well being (economy), prestige, ideology and power.

National interest refers to the preferences of a nation's leader, or put differently, the goals that are sought by the state.² States tend to pursue two kinds of policy preferences to operationalise their perceived national interest: material (that is,

¹ Katumanga M., *Security Concerns and Lateral Pressures as a Basis for Enhanced Regional Integration: The Case of North Western-Kenya* in M.Ahmed (Ed) *Deepening Regional Integration of the East Africa Community* (Addis Ababa: DPMF 2006) p.68

² Krasner, S. *Defending the National Interests* (Princeton: Princeton University Press, 1978) p. 156

economic well-being) or ideological.

In East Africa, the five states (Kenya, Uganda, Tanzania, Rwanda and Burundi) cannot avoid interactions and have formed the East African Community (EAC).

The East African Community dates back to the late 19th century. It began with the construction of the Uganda/Kenya railway in 1897, followed by the governor's conference (1900-1947), which became the East African High Commission (1947-1960), and was followed by the East African Common Services Organization, (1961-1967), that eventually led to the Treaty of East African Co-operation (from 1967 until the break-up in 1977).

After the collapse of EAC in 1977, the member states negotiated a Mediation Agreement that was signed in 1984. It divided the assets and liabilities of the former EAC and established the provision for exploring areas of future co-operation. Hence in 1991, the then East African heads of state held a meeting in Harare and reached an agreement to revive the East African Co-operation. This followed various meetings by the three heads of states culminating to the formation of a tri-partite working group in 1993 to work out modalities of a renewed co-operation. In 1999 the treaty establishing EAC was signed by the three heads of states and came into force in 2000.

1.2 Problem Statement

States interact and co-operate with a view of achieving and perpetuating their national interests. These interests include the pursuit of economic growth and stability, cultural and political liberation, state security and the general development of the nation.

Regional integration offers a route to overcome the disadvantages of the smallness of individual economies by pooling resources, strengthening the effectiveness of domestic policy making and enlarging markets available to regional firms and the subsequent increase in trade flow. The African destiny is summed up in the desire to develop, through collective self reliance, regional integration where political integration and economic integration are two sides of the self reliant approach.³ In recognition of the importance and potential of regional integration in promotion of economic growth, Kenya has been an active participant in regional integrations⁴ including the EAC.

The East African co-operation (1967-1977); an initiative of the East African states which were all less developed, newly independent, and vulnerable to domination suggested a convergence of their national interests. The three states desired to initiate and steer development in their respective countries and to protect each other from cultural and economic domination from the extra-continental and even continental powers.⁵

The formation of the East African Co-operation therefore involved four main

³ Mutharika, B. *One Africa One Destiny; Towards Democracy, Good Governance and Development* (Zimbabwe; Natprint Ltd, 1995) p.154

⁴ Brief on East African Community by department of East African Community March 2006 p.1

⁵ D. Mazzeo, *African Regional Organizations* (Cambridge: Cambridge University Press, 1984) pp.150-151

actors. These were the three countries and the formed co-operation (EAC).⁶ As an actor, the EAC's objectives were "To strengthen and regulate industrial, commercial and other relationships of the partner states to the end and there shall be accelerated, harmonious and balanced development and sustained expansion of economic activities the benefits to be shared equitably through the harmonization of economic policy, formulation of joint projects and consultation in the plan preparation and implementation in areas such as agriculture, education and man power, energy and power, industry, tourism, balance of payments, transport and communications, and so on"⁷

However, the other three actors being sovereign states had individual national interests that could not be fully achieved within the structure of the co-operation. The three states were therefore not only partners but competitors to achieve their individual economic development and political superiority. The goals of the EAC could not be achieved because each country was in pursuit of its individual interests, which conflicted with the general interests of the co-operation. This lack of reconciliation of individual sovereign interests and community interests was a major cause of the collapse of the EAC in 1977.⁸

Kenya had the monopoly of the common services in East Africa and this gave her an upper hand in economic development. It also meant that she was bound to gain more in EAC. This made Kenya take advantage of the situation and rushed out for the

⁶ Kyengo H., M.A Dissertation Thesis on Bargaining National Interests in East African Community – The Case of Kenya in EACU. 2006 p.18

⁷ EAC Cooperation Treaty, 1967

⁸ Nyirabu M. Lessons from the East African Community of 1967-1977 in M.Ahmed (ed) *Deepening Regional Integration of the East Africa Community*(Addis Ababa; DPMF2006) p.31

opportunity to achieve her national interests.⁹

The EAC as an actor pursued its interests which in one way or the other, were seen to favor all member states. However, Kenya and the other Partner States at the individual level also had interests which could not be achieved within the community. This meant that there was a conflict between the interests of individual Partner States and those of EAC. There was a conflict between Kenya's national interests and EAC's interests. The lack of reconciliation of individual sovereign interests and community interests in EAC aggravated its collapse in 1977.

From the above discussion, it is clear that the convergence of national interests is what led to the formation of EAC. However countries not only have converging interests, they also have diverging interests both of which have to be pursued concurrently. Furthermore states value their sovereignty and national interests so much so that they are unlikely to embrace integration fully.

The main challenge in the success and persistence of the newly revived EAC thus remains the pursuance of the individual member states' national interests. The new EAC was revived by the 1999 treaty that entered into force in 2000. It put forth a roadmap to begin with a Customs Union by 2004, to be followed by a Common Market by 2007, then the Monetary Union and finally a Political Federation by 2013. The EAC faces economic, global, political and financial challenges. The implementation of the Customs Union has been successful but very slow and we are left to wonder whether the partners will ever reach a political federation. There may

⁹ Adar and Ngunyi.. *The politics of Integration in East Africa since Independence* in Oyugi W. (Ed) *Politics and Administration in East Africa* (Nairobi: East Africa Educational Publishers, 1994) pp. 396-408

be the will for integration among the partners especially in this era of liberalization but national interests stand in the way of integration. This study seeks to investigate how Kenya's sovereignty and national interests, especially economic growth and stability, affect the process of integration in the EAC.

1.3 Objectives

1.3.1 Main objective

The main objective of this study is to determine whether Kenya's pursuit of its national interests has undermined the process of integration in the EAC.

1.3.2 Specific objectives

1. To determine whether Kenya's national interests hinder EAC integration.
2. To determine whether Kenya's sovereignty interferes with EAC integration.
3. To determine whether Kenya's reluctance to act as the region's hegemon undermines EAC integration.

1.4 Justification of the Study

This study aims to contribute to the understanding of inter-state relations in East Africa both within the defunct EAC and the newly revived EAC.

The pursuance of individual national interests in the EAC led to a conflict of community interests in the co-operation. This in turn led to the collapse of the defunct EAC. It is the convergence of national interests that led to the formation of EAC yet the divergence of the same interests led to its collapse. The study will look at how

Kenya's national interests, specifically economic interests, in EAC may constrain the integration process.

It is from this background that this study seeks to contribute to academic work while looking at the current EAC treaty and the extent to which it has established structures to reconcile individual national interests and community interests so as to avoid past mistakes and lead to effective integration that may one day lead to a federation in EAC. Further, Kenyan policy makers should then be able to weigh the pros and cons of national interests versus community interests when it comes to making decisions on matters regarding EAC. For integration to be realized fully and on schedule, policy makers when making regional policies must accept and come into terms with each Partner State's national interests. The regional policies should integrate and blend the diverse views and interests of the Partner States for effective integration.

1.5 Literature Review

1.5.1 Introduction

Integration refers to the process by which supranational institutions come to replace national ones¹⁰. It therefore means states have to give power and sovereignty to higher authorities leading to centralization of political power, culture and information. Ernest Haas defines integration as a process whereby political actors in several distinct national settings are persuaded to shift their loyalties, expectations and political activities toward a new centre, whose institutions possess or demand

¹⁰ Goldstein, J. *International Relations*
(New York: Longman Publishers, 2003) p.441

jurisdiction over the pre-existing national states.¹¹ Integration can take economic or political form or both. In the East African region integration has taken both political and economic forms and dates back to the late 19th century.

This review looks at various studies and literature on how national interests constrain integration going back to the defunct EAC (1967-1977) to the present EAC and also in the European Union (EU) and in the North American Free Trade Area (NAFTA).

1.5.2 National Interests in the Defunct EAC

Various scholars posit that national interests constrained the process of integration in EAC as early as 1963 when the three states committed themselves to a political federation after signing the Nairobi Declaration.

Ochwada (2004) posits that in the debates on the nature of integration, much energy was consumed by the demands for national building as pitched against the federation scheme. There were divergent views even within the countries on what form the federation ought to take. The Kenya African National Union (KANU) and the Kenya African Democratic Union (KADU) for example were engaged in animated debates in the question of integration. Whereas the two parties accepted the idea of federation, KADU inscribed in its policy position the idea that 'the regions (*majimbo*) must maintain their powers'. Regionalism as advocated by KADU emphasized the need for autonomy of different regions within Kenya and carried this

¹¹ Haas, B. *The Uniting of Europe* (Stanford: Stanford University Press, 1958) p.6

policy into the federation debates, and in doing so came closer to Buganda's position on the matter. KANU on the other hand campaigned on the pledge of East African federation which emphasized the need for a unified Kenya.

Uganda government supported the federation but the kingdom of Buganda opposed it, this made the Uganda government for its own national interests to be non committal to the process. Tanganyika envisaged a closer political federation that would alter existing economic disparities within the sub-region. Kenya on the other hand, maintained that a true federation must exercise control over foreign policy and foreign relations.¹²

Anyang'-Nyong'o (1990) and Mutere (1996) have argued that personal and ideological differences of the three East African leaders precipitated the collapse of the EAC. These ideological differences were a reflection of the political and economic separate paths the East African partners had chosen to follow to advance their national interests. Tanzania chose to follow a Socialist path, while Uganda contemplated following a mixed economy. Kenya on the other hand, embraced free market capitalism disguised as African Socialism. The different political philosophies and economic policies came into conflict with one another and rendered the federation a spent idea.¹³

The Heads of State were not ready to forfeit their political and economic sovereignty and the members lacked commitment to implement the economic policies that their leaders had promulgated. Mutere (1996) notes that the East African regional

¹² Ochwada H., *Rethinking East African Integration: From Economic to Political and from State to Civil Society* (2004) pp.64-65

¹³ Anyang'-Nyong'o, P., ed *Regional Integration in Africa: Unfinished Agenda* (Nairobi, Academy science publishers: 1990) and Mutere, A., 'Mediating and keeping Peace,' *Southern Africa Political and Economic Monthly* Vol 9.(1996a) pp.10-12

institutions could hardly play a dynamic and mediatory role in harmonizing partner states' national interests. He also notes that the composition of the East African Authority, the supreme decision making body, was unfortunate. This is because it comprised of the three countries' presidents which increased the danger of transforming personal rivalries into more lasting inter-state conflicts.

According to Gimode (1996), strained relations among the Heads of State strained EAC. Each state developed different attitudes towards each other; Kenyan mass media subtly referred to Tanzania's Socialism as a euphemism for laziness and lack of productivity. Tanzanians referred to General Idi Amin as an ignorant fascist.¹⁴ In 1975, Kenya's Attorney General Charles Njonjo, had advised the government to withdraw from the community. Similarly the ruling party and the cabinet in Tanzania had advised President Nyerere on the same.¹⁵

Political trends in Uganda and lack of political will saw the Partner States exercise their powers to advance their national interests. Following Major-General Idi Amin Dada's assumption of power in Uganda in 1971, Tanzania and Uganda became engaged in a protracted struggle which had political, administrative, and military ramifications.

Border skirmishes broke out and there was fighting though small in scale. These hostile military engagements dramatized the existence of disintegrative forces in the Community organization as Uganda decided to sever air, water, and telecommunications links temporarily with Tanzania. Tanzania's faithfulness to the

¹⁴ Mutere, A., 'Regional Co-operation and Anatomy of Conflict' *'Southern Africa Political and Economic Monthly'* Vol 9.(1996b) p.8

¹⁵ Gimode, E., 'Attempts at Economic Integration in East Africa: Memories, Problems and Prospects', Paper presented at the 4th Historical Association of Kenya Symposium at Kenyatta University, Nairobi. (1996) p.18

former president of Uganda, Milton Obote, led almost inevitably to a refusal to recognize the new military regime and participate with General Amin at meetings of the East African Authority. This bilateral conflict crisis cast a shadow over the Community's operations, for appointments to high Community office which require the joint agreement of the three East African Heads

From the foregoing it is evident that the three heads of state were being driven by selfish interests or their national interests. This in turn constrained the co-operation (EAC).

1.5.3 The Revival of the EAC

In 1999 the treaty establishing EAC was signed by the three heads of states and came into force in 2000. The treaty was officially launched on 15 January 2001 in Arusha, Tanzania. The objectives of the new E.A.C. as provided in article 5 of the E.A.C treaty (1999) is to develop policies and programmes aimed at widening and developing cooperation among the partner states in political, Economic, Social and Cultural fields, Defense and Security among other areas of mutual benefits. From the objectives, the community aims at increasing the social welfare of East African citizens through regional, economical, social, political, and cultural integration. In order to achieve the objectives of EAC, the treaty provides four phases of integration: Customs Union, Common Market and Monetary Union, and eventually, Political Union.

1.5.4 The Implementation of the East African Customs Union (EACU)

The Customs Union Protocol was signed in March 2004 and came to effect on 1st January 2005. The Custom Union has addressed the major challenges relating to uneven distribution of benefits and the need to put in place an efficient mechanism for sharing benefits and compensating losers; revenue loss due to over-dependency on trade taxes as the economic performance picks up; higher consumer costs that may arise by importing from a higher cost member (trade diversion). The Common External Tariff (CET) has been appropriately positioned to minimize trade diversion and low trade flows within EAC countries hence the need for deliberate efforts to enhance regional trade. The protocol appreciates that the three partners are at different levels of development and therefore have differing comparative advantages.¹⁶

However even with all these measures in place it is evident that Kenya has the largest economy among the three partners and has a comparative advantage in more areas. Kenya is thus likely to benefit more economically than the other partners in the Customs Union.¹⁷

Mullei (2003) posits that key stakeholders in Kenya are more concerned about the speed of implementation of the Customs Union than equity issue.¹⁸

Stakeholders in Tanzania were worried that the Customs Union would not promote fair economic dealing in the region. They argued that a straight unbundling of the community's trade regime will hurt Tanzania because of its vulnerability with regard to its competitive disadvantage while stakeholders in Uganda were positive

¹⁶ Odhiambo, W., Equity Issues in Regional Trade Arrangements: The Case of the EAC in Ajulu, R., (Ed). The Making of a Region: The Revival of the East African Community p.136

¹⁷ Ibid p.136

¹⁸ Mullei, A., Steering East Africa Towards a Customs Union: Suggestions from a Pilot Study (Nairobi: ACEG, 2003) p.26

and viewed the establishment of the Customs Union as having potential for increasing profits, expanding production, increasing capacity utilization and creating space for upgrading technology. However they have perceived costs related to loss of revenue, potential collapse of industries, loss of employment conflict with other regional integration schemes and a loss of sovereignty.¹⁹ These concerns which were driven by members' interests delayed the implementation of the Customs Union and generally affected the schedule of the remaining phases of integration.

Other Partner States have been compelled to join EAC for various interests. Uganda, Burundi and Rwanda are landlocked. Yang and Gupta (2005) observe that regional integration schemes are beneficial to Africa's landlocked countries because a Customs Union, with coastal countries may effectively connect landlocked countries to the ocean.²⁰ Tanzania with the other partners hopes to gain from Kenya's larger manufacturing base. The EAC framework provides the opportunity for Kenya's partners to enjoy a share of the benefits of Kenya's progress at a reduced cost; this is through the principle of asymmetry.

Kenya's main interest in EAC is to secure a larger regional market for its manufactured goods. The loss of a major market in the defunct EAC for Kenya has been sighted as the reason why Kenya enthusiastically pursued the revival of EAC. Kenya and Uganda are also interested with restoring cross-border security and peace through the EAC. They hope to use the EAC as a platform for joint strategies to combat the cattle rustling menace involving the *Pokot* of Kenya and the *Karamajong*

¹⁹Odhiambo W. op.cit pp.142-143

²⁰ Yang, Y., and Gupta, S., *Regional Trade Agreements in Africa* (Washington DC: IMF, 2005) p.8

of Uganda. They also hope to maintain peace at their borders.²¹

Other scholars view shared resources as a challenge for integration. Since Partner States have interests over these resources. The revival of EAC has renewed the challenge of control of the waters of the Nile Basin with the various countries affected showing interests over this resource. The Nile has been a central element in the evolution of regionalism in East Africa going back to the early 1920's when the first Free Trade Area was formed in East Africa. The 1929 colonial pact between Britain and Egypt bestows almost exclusive rights to Egypt and Sudan to exploit the Nile waters while barring other riparian states from using the Nile waters.

The members of EAC: Kenya Uganda and Tanzania have a common interest in facilitating the economic development of the Lake Victoria Basin. Tensions over the Nile water has increased as a result of spiraling demand for water to generate hydroelectric power, for drinking and irrigation amid acute poverty, food insecurity, cycles of drought and famine and growing population.

The EAC countries, in pursuance of their national interests, have asserted their right claims to a fair share of the Nile waters on the discourse of rights to counter Egypt's security discourse. In December 2003, Kenya reportedly renounced the 1929 treaty. In response, Egypt's Water Resources Minister declared that Kenya intended to withdraw from the Nile Basin Treaty and threatened economic sanctions by his country against Kenya. This belligerence compelled Kenya's Minister for Water and Resources Development and the chair of the Ministers' Council to storm

²¹ Nying'uro, P. 'Regional Integration in East Africa: The Past, Present and The Future' Paper Presented at the Regional Conference of Capacity Building For the Fast Tracking of the EAC Common Market, January 29-30, 2007, Nairobi p.8

out of meeting of regional water ministers.²²

In 2004, Tanzania's Deputy Permanent Secretary in the Ministry of Water and Livestock Development claimed that since independence Tanzania had held the position that the two Nile treaties were illegal. Similarly in Uganda, a prominent Ugandan MP has called for rejection of the colonial treaties and in 2004, Uganda's president Yoweri Museveni, called into question Egypt's monopolization of the Nile.²³

The Nile Basin Initiative (NBI) was later formed. It brings together the Nile basin countries of Ethiopia, Burundi, DR Congo, Egypt, Eritrea, Kenya, Uganda, Tanzania, Rwanda and Sudan. The aim of NBI is to bring together these member states so that they can agree on a new deal that will govern the use of the Nile waters after throwing out the outdated bilateral agreements between Egypt and former colonialists Britain because not all the countries had consented to them. However there have been suspicions from member states, specifically Tanzania over Uganda's recent secret dealings with Egypt. Tanzania suspects Uganda could be intending to draw up a framework for a 'Mubarak-Museveni' pact. Tanzania's interest in the matter is from concerns that Uganda, which holds the major exit to the Nile, is releasing water beyond the normal flow to the river.²⁴ In response Uganda has agreed on having had discussions on the Nile, it has referred to the Nile as Egypt's lifeline and has asked Tanzania not to interfere with its bilateral relations with Egypt. This has caused tensions in EAC, as we see these members being driven by their national

²² Kagwanja P., Calming the Waters: The East African Community and Conflict over the Nile Resources. *Journal for Eastern African Studies* Vol 1 Nov. 2003 pp321-337

²³ *ibid* pp321-337

²⁴ The East African Standard, September 1-7, 2008 p.2

interests.

Haji (2007), in a study on youth employment situation and challenges in East Africa countries notes that the three East African countries have national long term development frameworks or visions in EAC. They hope that labor mobility provided in the Common Market will reduce these challenges. He however notes that even with these regional policies, Partner States do not want to put the limited employment opportunities available to local workers under undue stress and instead believe that gradual, targeted introduction of labor mobility is the best way to move towards a regional policy on general labor mobility.²⁵

Kayunga (2006) posits that unilateral decisions taken in the name sovereignty have significant implications on a region's economy and politics. In EAC, the three countries are not pulling together on security and foreign policy matters. Each State is driven by its national interest. Uganda has been pursuing foreign policy objectives contrary to the other Partner States, for example in the war against Iraq; Uganda joined the coalition of the willing.²⁶ Further domestic problems preoccupy the Partner States; this preoccupation weakens their commitment to EAC. Uganda is pre-occupied with both the war in the north and the transition from the Movement system to multiparty politics. Kenya is pre-occupied with rebuilding the country after the corruption and mal-administration of the KANU government and is trying to regain its lost position in the international system. Kenya is also occupied with putting its house in order after the post election chaos and violence and also has to deal with a

²⁵ Haji S. The Youth Employment In East Africa ;An Integrated Labour Market Perspective Vol 1, No. 2, July 2007 p.20

²⁶ Kayunga,S., Deepening Political Integration of the EAC Countries: The Uganda Case in M.Ahmed (ed) *Deepening Regional Integration of the East Africa Community* op.cit pp 217-223

new governance system of a Coalition Government. Tanzania on the other hand is said to have spent most of its regional diplomatic currency on the peace process in Burundi.

The conflict in Northern Uganda is seen to be consuming a lot of resources, which otherwise could have been used in fostering development and supporting various activities of the East African region. However it is argued that there are forces within the Government of Uganda which do not want the war to end. To them the war is beneficial since militarily it gives the government a reason to have a huge defense expenditure and politically, Museveni's hold on power and his support in the southern parts of the country have depended on the fear of the northern people regaining power; the war keeps this fear alive.²⁷

Nyirabu (2006) argues that political aspects shape the foundation for integration because in order for any integration to be created there has to be a sense of political will. He cites the case of Tanzania where protected socialist policies of the past have made Tanzanian businesses least competitive. Despite economic reforms that have breathed renewed life into Tanzania's private economy, the country's business environment continues to demonstrate critical shortcomings. Business persons regard the Tanzanian State as an obstacle in their path rather than a source of support. Economic liberalization has made some portions of the business community more dependent than ever on state action.

The business community is concerned about the foreign investment in the economy especially from South Africa. Multinationals from South Africa are on the increase and this has adverse effects on local businesses, however Mkapa for his own

²⁷ Ibid p 217

interests supported the presence of South Africans in Tanzania and in East Africa. The apprehension that is being witnessed by the presence of South Africa in East Africa highlights the reality that sustaining export volumes in these markets will be impossible unless steps are taken to provide an opening to increase their visible and invisible earnings from economic interaction with South Africa.

Further, due to the protective Socialist policies that have persisted in Tanzania for decades, The labor force in Tanzania and the general public fear that deeper integration for example the free labor movement in the Common Market will make Kenyan and Ugandan workers dominate the labor market in Tanzania. It is also believed that Tanzanian workers, being less competitive would fail to compete and fail to get employment in Kenya and Uganda.²⁸

Closely related is another study by Kweka and Kabelwa (2004) who identified the top trade agenda (interests) of Tanzania in the global trading system, including regional integrations like the EAC, as increasing gains from international trading system and benefitting from international trade negotiations, however they noted that there was a perception that Tanzania would incur losses in the distribution of benefits of integration. This has created skepticism among Tanzanians about the EAC and the whole integration process.²⁹

In the ongoing negotiations to build a consensus on forming a Common Market, the biggest barrier to reaching an agreement is seen to be the issue of

²⁸ Nyirabu M., Democratic Governance and Deepening Political Integration of the EAC: The Case of Tanzania in M.Ahmed (Ed) *Deepening Regional Integration of the East Africa Community* op.cit pp271-273

²⁹ Kweka J., & Kabelwa G., Assuming Development Gains from the International Trading Systems and Trade Negotiations: The Case of Tanzania. Paper presented to UNCTAD '*Hearing with the Civil Society and the Private Sector*' conference in 16 January 2004

sovereignty and national interests. Tanzania has several reservations, the most important one being the threat of possible economic disruptions. It considers itself to have a weaker economy and wants reassurance that it will have more time to integrate. Though a Common Market is meant to open up markets to more trade with fewer restrictions, Tanzania has reservations. A case in point is the recent barring of Kenyans and Ugandans from buying floated shares in Tanzania's National Microfinance Bank.³⁰

Kenya and Uganda have argued that Tanzania is more loyal to the Southern African Development Community (SADC) to the detriment of EAC interests. This feeling is compounded by the fact that Tanzania had earlier quit the Common Market for Eastern and Southern Africa (COMESA) to join SADC. In SADC, Tanzania is facing the same issue of 'dominance' by South Africa.³¹ Tanzania has been driven by its national interests to join SADC and COMESA.

Collectively, the EAC members hope to work together to strengthen their bargaining power in global economic, trade and political issues. They also hope to collectively tackle the challenges of marginalization of the region, disintegration of the societies and fragmentation of communities under globalization.³²

1.5.5 National Interests in the European Union (EU)

The issue of National interests is not unique to EAC but also comes up in other regional integration schemes. In the EU, national interests have interfered with the

³⁰ Daily Nation, August 19, 2008. p.24

³¹ The East African Standard July, 21-27, 2008 p.11

³² Baregu, M., 'Towards the Federation of East Africa: The Logic of Fast-Tracking.' 2005 p.12

integration process since the birth of European Coal and Steel Community (ECSC).

The ECSC (1952) was a technical cooperation which involved six states (France, Germany, Italy, Belgium, Netherlands and Luxembourg). The six states worked to reduce trade barriers in coal and steel and to coordinate their coal and steel policies.

According to Goldstein (2006), political and military co-operation proved much more difficult. The six ECSC states signed a second treaty in 1952 to create a European Defense Community to work towards integrating Europe's military forces under one budget. France for its own national reasons and interests failed to ratify the treaty and Britain stayed out of the ECSC. In 1953 the partner states discussed the formation of a European Political Community but could not agree on its terms. In economy co-operation, the supranational institutions succeed but in political and military affairs state sovereignty prevailed. From the foregoing, we see states being driven by their national interests in supranational organizations; these states want to benefit economically from these organizations and at the same time the states want to retain their sovereignty.³³

Further he notes that, the Common Agricultural Policy (CAP) adopted in the European Community in 1969 has led to recurrent conflicts among member states and tensions between nationalism and regionalism as each of the EU members give subsidies to its farmers to promote national self sufficiency in food. National interests again prevail in the integration process.

The Maastricht treaty of 1991 changed the European Community (EC) to EU. The treaty entailed the idea of a Monetary Union and Political and Military

³³ Goldstein, J. op.cit p 450

integration. After signing the treaty, Britain and Denmark gave little support for a Political Union. The ratifying process of the Maastricht treaty stirred up strong public feelings against a closer European Union in several countries. Some citizens in these countries began to react strongly against the loss of national identity and sovereignty implicit in Maastricht.³⁴ Britain, for its own national interest made some reservations in the treaty and was allowed to stay outside of a Monetary Union and of a Unified European Social Policy. Denmark citizens also rejected the treaty in a referendum in 1992 and it was only approved in a second vote which made provisions like those of Britain. Because of national interests of member states which stood in the way, the Maastricht treaty was slowly implemented with fewer participating countries than originally hoped.

The implementation of the European Monetary Union (EMU) in 1999 was quite slow because of members' interests. Not all member states were willing to give up their currencies. Britain has insisted on retaining the pound while Germany feared that Monetary Integration would destabilize its currency. This was followed by political infighting on who should lead the European Central Bank (ECB) which was to oversee the issue of the common currency (EURO) and a nasty dispute arose between Germany and France over ECB's leadership. As a result leadership had to be divided, with Germany taking the first half of the eight years then France taking the next four years.³⁵ This dispute made observers see political infighting as ominous for the future amid suspicions that one or another country would be trying to force its

³⁴ *ibid* p.451

³⁵ Rourke, J., *International Politics*
(U.S.A: Mc Graw-Hill, 1999) p.486

fiscal policy on the others.³⁶

There is dissatisfaction of the EU government in Brussels, with some member states opposing the expansion of EU functions. Norway for example feels that the Euro taxes are too high and EU democracy is too powerful and unresponsive. Britain, France and Italy on the other hand, fear German's domination of EU since German accounts for 21% of EU's population. The moves toward eventually integrating national military forces are especially unsettling to these countries who remember past German aggressiveness.³⁷

There have also been fears among EU members on EU enlargement. Many have criticized the EU for taking too long to enlarge and for imposing burden-some conditions on the candidates. Leaders of current EU members are promoting accession because they consider enlargement to be in their long-term economic and geopolitical interests. Some interest groups in current member states oppose enlargement because they will bear a disproportionate share of short-term costs.³⁸

Despite the fact that EU is by far the most extensive regional effort having moved substantially toward full economic integration, future political integration is not assured due to members' national interests and loss of sovereignty.

1.5.6 National Interests in NAFTA

The first step towards creating NAFTA was the United States (U.S)-Canada Trade Agreement (1988) to eliminate most economic barriers between the two

³⁶ *ibid* p.486

³⁷ *ibid* p.235

³⁸ Moravcsik, A. and Vachouda, M. National Interests, State Power, and EU Enlargement in *East European Politics and Societies*, Vol 17, No.1 (2003) pp 42-57

signatories by 1999. Four years later Mexico was added to the Free Trade Zone in October 1992 when the leaders of the three countries met in San Antonio, Texas to sign the NAFTA documents. In 1993, each of the three countries' legislatures ratified NAFTA and the treaty came to effect on 1st January 1994.³⁹

For the U.S, NAFTA was expected to contribute to democracy in Mexico and in Latin America as well. President Bush had in 1991 announced the Enterprise for the American Initiative (EAI) which had several basic policies for the Western Hemisphere. These were: to build a strong and more comprehensive economic partnership in order to support the process of democratic change and economic liberalization in Latin America, to form free trade with Mexico and later with all Western countries, to reduce external debt of the Latin American countries to more manageable levels and finally to support the preservation of the environment.⁴⁰

NAFTA had been included as one of the main objectives of the EAI. NAFTA was thus inspired by the same spirit as the EAI especially with respect to democracy. In effect when President Bush explained EAI, he exhibited his strong confidence in democracy as a consequence of the victory of the democratic world over the socialist world and he even expected Cuba's return to the democratic world in the near future.⁴¹ This clearly brings out the United States' national interest of democracy in the world and more specifically in NAFTA.⁴²

The issue of democracy in Mexico brought in a lot of debates in the Congress.

³⁹ Rourke, J., op.cit p.486

⁴⁰ Kaufman S. and Immerman, R., eds *Japan And Latin America In The New Global Order*, (London: Lynn Renner Publishers, 1992) p. 147

⁴¹ *Weekly Compilations of President Documents*, July 2 1990
(Administration of George Bush, 1990, June 27) pp.1009-1013)

⁴² Matsushita, H., *The First Integrated Wave of Regionalism and Democratization in America: A Comparison of NAFTA and MERCOSUR*. *The Japanese Journal of American Studies*, No.11(2000) p.30

Mexico wanted more time to democratize but was interested and welcomed NAFTA expecting better economic conditions, job increases and more opportunities to work in the United States. Finally, the democratic principle was excluded when it came to ratifying the NAFTA treaty in 1993. Clinton did not want to raise the question of the deficiency of democracy in Mexico in order to give more priority to the ratification process. Here the United States has other interests: economic interests. Even though a democratic principle was excluded, the kind of democratic principles which were inserted into the integration schemes contributed to the strength of democratic values shared by member countries. The United States has continued pursuing democracy in Mexico especially using non-governmental organizations.⁴³

The United States is interested in enhancing environmental protection. It has thus used and continues using NAFTA to coerce the poor member states to accept trade environmental rules. Greener richer countries have been trying to coerce poorer dirtier countries into environmental friendly international liability rules that solve trade and environmental problems. This coercion leads to internalization of the social costs and eventually enhances efficiency.⁴⁴

Regional Trade Agreements have been seen to build peace. For both the U.S and EU delegates, it is a foreign policy priority to spread regional economic agreements. This has the explicit rationale of contributing to the prevention, management and resolution of violent conflicts. It in turn promotes international trade and security enabling these countries to pursue their national interests.⁴⁵

⁴³ *ibid* p.35

⁴⁴ Steinberg, R, Trade-Environmental Negotiations in the EU, NAFTA and WTO: State Power, Interests and the Structure of Regime Solutions. Working Paper 75 (1995)

⁴⁵ Brown, O. et al., Regional Trade Agreements: Promoting Conflict or Building Peace? Oct 2005. p7

The NAFTA agreement has established schedules for reducing tariff and non-tariff barriers between the three Partner States by 2009, but national interests of the Partner States have been a constrain to this process.

The U.S for example, is said to be overzealous in enforcing antidumping (AD) and countervailing duty (CVD) laws in NAFTA. The Bush administration's protectionist actions speak far louder than its free trade words and Congress jealously protects the right of US industries to invoke AD and CVD laws against imports from all sources, including its NAFTA partners. The United States' AD and CVD laws, which are designed to offset the effect of unfairly priced or subsidized imports create significant barriers to imports and are formidable weapons in the hands of US producers who wish to limit foreign competition.⁴⁶ Canada and Mexico in an effort to promote their exports to the U.S have put it in their interest to fight hard against this. There has also been a long-running trade dispute between Canada and the United States over Canada's products including softwood lumber exports to the United States.⁴⁷

Mexico's main national interest in NAFTA is getting jobs for its people and uplifting its economy. This is happening at the expense of the U.S; plants are being shifted from the U.S to Mexico costing the U.S over 60,000 jobs.⁴⁸ But even with the job creation, there are substantial reservations among the experts and public about NAFTA. Mexicans and Canadians are concerned about the possibility of being overwhelmed by American dollars and culture. Sharing the continent with the U.S was once likened by then Canadian Prime Minister, Pierre Trudeau, to sleeping with

⁴⁶ Macrory, P. NAFTA Chapter 19, *C.D Commentary Howe Institute*, NO.168 September 2002 p.95

⁴⁷ Ibid p.95

⁴⁸ Rourke, J.,op.cit p.489

an elephant. 'No matter how friendly and even tempered the beast...one is affected by every twitch and grunt'⁴⁹ There are also fears about the flooding of U.S products and business ventures into Mexico. An earlier Mexican leader commented that the Mexican economy and culture was becoming Americanized.⁵⁰

Closely related to this is the issue of sovereignty, scholars posit that it is clear that Canada and Mexico are not willing to give up their sovereignty and become the 51st and 52nd American States.⁵¹ With these national interests among others in play then it seems political integration in NAFTA is still far off in the future.

1.5.7 Conclusions

From the foregoing it is evident that States join integration schemes to pursue certain national interests. The individual interests of partner states may conflict with community interests in an integration scheme.

Kenya's interest in EAC relates to accelerating her economic growth with the resultant benefits of uplifting the living standards of Kenyans. Further Kenya expects to benefit from the larger regional market, the pull of regional resources, emergent effective management and economies of scale that generate wealth and create employment for Kenyans. With Kenya having the largest economy and being more developed than the other two partners, all responses from survey reflect Kenya's intentions of getting maximum benefits and dominance in EAC. The uneven benefits will also not go very well with the other two partners and may constrain the

⁴⁹ Duchacek, I., *Nations and Men*
(Hinsdale, IL: Dryden, 1975) p.146

⁵⁰ *ibid* p.489

⁵¹ Rourke, J., *op.cit* p.490

integration process, just as was the case with the defunct EAC.

In the case of the EU and NAFTA members are pursuing certain national interests in their respective integration schemes. Though these integration schemes are at advanced stages, they have had problems with their members' national interests which in one way or another constrain the integration process.

1.6 THEORETICAL FRAMEWORK

Theories of integration

David Mitrany (1966), the father of the theory of functionalism sought to find out the possibilities of how transnational ties might lead to international integration. He argues that functionalism is essentially an assertion and defense of the proposition of international, economic and social co-operation which are a major prerequisite for the ultimate solution of political conflict and elimination of war.⁵² He links functionalism to ultimate prevention of war and development of authoritative world political institutions (federations).

Mitrany argued that modern society has created many complex technological problems that can best be resolved by experts as opposed to politicians. He argued that proliferation of common problems require collaborative responses from states. Hence non political problems (economic, social and scientific) problems should be assigned to non political experts. Mitrany believed in the process of ramification where successful collaboration in one particular functional/technical area would lead

⁵² Mitrany D., *A Working Peace System*.
(Chicago: Quadrangle Books, 1996) p.18

to collaboration in other areas like in political integration.⁵³ Opposed to realists who view international relations as a zero-sum game, Mitrany argued that international relations could be turned into a positive-sum game where all players could benefit.⁵⁴ He saw international co-operation as a realistic way to deal with common problems of the modern world.

The interest in Mitrany's functionalist theory was spurred by the successful creation of the European Coal and Steel Community in 1952 and the European Economic Community in 1956 which seemed to hold out an eventual promise for political unification in Europe.

One of the best known theorists of regional integration, Ernest Haas, defined regional integration as a 'process whereby political actors in several distinct national settings are persuaded to shift their loyalties, expectations and political activities toward a new centre, whose institutions possess or demand jurisdiction over the pre-existing national states'.⁵⁵ Haas's conceptual approach to the study of political integration soon acquired the label Neo-functionalism. Haas rejected the notion that technical tasks could be separated from politics and power and argued that integration could only occur if political elites perceived it to be in their interest. The assigning of tasks to an international organization would be attained and sustained only if actors believe their own interests are best served by making a political commitment to an international organization.⁵⁶ Haas therefore attempted to stipulate the condition and process whereby individuals find it in their own self interest to collaborate for mutual

⁵³ *ibid.* p.22

⁵⁴ *ibid.* p.24

⁵⁵ Haas, B., *The Uniting of Europe* (Stanford: Stanford University Press, 1958) p.16

⁵⁶ *ibid.* p.16

gain, which result in the potential for a peaceful transformation of politics.

The Neo-functional theory asserts that the integration process gradually erodes the national sovereignty of the member-states transforming the Hobbesian anarchy to some form of irreversible political union. The Neo-functional approach, unlike the federalist, prefers a gradual integration process which begins with functionalist variables and culminates into a political union. The functionalist variables are economic, social, technical, and cultural imperatives of co-operation.

The Neo-functional theory essentially prefers the non-political route to integration. It sets about five stages that the regional integration scheme has to undergo before achieving full integration. These are the Free Trade Area, Customs Union, Common Market, Monetary Union and the Political Union. Each further stage of integration is attained by a spill-over from the preceding one. The Neo-functionalists argue that this is a more realistic approach because many states will resist the instant and sudden relinquishing of sovereignty required by federalism.⁵⁷

EAC, just like the EU is following the Neo-functional approach. EAC has successfully implemented the Customs Union, albeit with many problems and is in the process of implementing the Common Market. The implementation of the Customs Union was and is still constrained by many problems and so is the Common Market. National interests of the Partner States and ceding sovereignty to EAC have been major constraints to the integration process.

⁵⁷ Mazzeo, D., *African Regional Organizations*
(Cambridge university Press, 1984)

1.7 HYPOTHESES

1. National interests pursued by Kenya in EAC will constrain the process of integration.
2. Kenya's pursuance of economic development and stability objectives within the EAC will interfere with the process of integration.

1.8.0 RESEARCH METHODOLOGY

1.8.1 STUDY AREA

This study will be carried out in Nairobi, Kenya. This is because this is a case study of Kenya and we have institutions and key government officials dealing with matters of EAC based in Nairobi, for example in the Ministry of East African Community, the Ministry of Foreign Affairs, the East African Community Secretariat and the three East African Embassies.

1.8.2 SAMPLING PROCEDURE

This survey will use purposive sampling. This is because the revival of the EAC is a recent process which is still ongoing and there may only be a limited number of individuals who may have the information on the process of the revival of EAC. This sampling method targets those who have directly dealt with issues relating to EAC and also individuals who are currently dealing with issues related to EAC.

1.8.3 TYPES AND SOURCES OF DATA

Primary and Secondary data will be used for this research. Primary data will be collected from personnel in Ministry of East African Community, Ministry of Foreign Affairs, and personnel from the three East African embassies. Secondary data will be obtained from books, government records, journals, scholarly papers, internet and literature from the respective embassies.

1.8.4 DATA COLLECTION METHODS

The study will collect primary data using semi-structured questionnaires which will be administered through personal interviews. This method will be able to give more in depth information which would otherwise not have been captured if all the questionnaires were to be sent out to all respondents to fill on their own.

However, the limitations of using this method include the likelihood that it can be time consuming and with a relatively high possibility of introducing interviewer bias.

Secondary data will be collected from records and other documents that may be available at the EAC desks, the embassies and across various libraries. These data collection techniques are further explained below.

Library research method and electronic media

The study shall utilize both published and unpublished material to obtain secondary data required. These sources include books, journals, development plans, papers and official reports among others. The internet and other media such as electronic journals will also be used.

Structured/personal interviews

This will be one of the main sources of primary data to meet the study objectives. A personal interview is a face to face interpersonal role situation in which an interviewer asks respondents questions designed to elicit answers pertinent to the research hypothesis.⁵⁸ The reason for choosing this technique is to target key persons who possess vital perspectives on EAC. Such persons include key personalities in Ministry of Foreign Affairs, Ministry of East African Community and from the three East African embassies, including the permanent secretaries and Heads of EAC desks in the three ministries.

This technique allows flexibility in the questioning process; the interviewer can determine wording of questions, clarify unclear terms and probe for additional information.⁵⁹ The interviewer can also control the interview situation to ensure questions are asked in the right sequence. Finally this technique has a high response rate and will enable me to collect supplementary information about respondents for example their background. This could help me in interpreting the results. However the disadvantages of this technique include; the high costs involved, interviewer bias and lack of anonymity of the respondent.

⁵⁸ Nachmias, C. and Nachmias, D. *Research Methods In the Social Sciences* (Great Britain: St martin's press, 1996) p232

⁵⁹ *ibid* p.232

CHAPTER TWO

THE HISTORY OF THE EAC

2.1 Pre-colonial societies and integration

The East Africa region possesses a common history dating back to pre-colonial period. During this period people intermingled freely without inhibition and restrictions of artificial borders. They traded, intermarried and related variously even in political affairs of their communities within the region and beyond. Some communities even established commercial empires beyond their region built on shrewd alliances with local rulers or people based on either marriage or fictional kinship ties. For example, Some Arabs and *Waswahili* traders from the East African coastal region established chiefdoms and kingdoms in areas as far as the Great Lakes of East Africa.⁶⁰ They created these empires to secure important scarce items and products that were not available in the areas from where they came. Furthermore they needed to purchase goods for exchange in the vibrant export and import of trade at that time.

The existing political organization within the region did not deter movement and the co-residential status of people. Local leaders would levy taxes and tariffs when it was necessary. This was the case with the nineteenth century kingdoms of *Mirambo of Wanyamwezi* and *Kabaka Mutesa I of Buganda*.⁶¹ The *Akamba* of present day Kenya and *Yao* of Tanzania were similarly engaged in long distance trade

⁶⁰ Zeleza, P.T. *A Modern Economic History of Africa: Vol 1. The Nineteenth Century* (Dakar, Codesria Book Series:1993) p.303

⁶¹ Ochwada H., *Rethinking East African Integration: From Economic to Political and from State to Civil Society* (2004) p.56

in parts of Central and East Africa. This was a regionally integrated area characterized by expanding commercial networks and good neighborliness.

Adjacent communities such as the *Maasai* and *Kikuyu* of Kenya engaged in local trade activities. The *Hutu* and *Tutsi* of Rwanda also co-existed peacefully until the colonial system governance in Rwanda and Burundi gave the minority *Tutsi* license to rule over the 85% *Hutu* majority.⁶²

Inter-ethnic or intra-ethnic differences, disputes and conflicts existed between ethnic groups but these did not deter the people from pursuing wider communal interests. Mazrui describes this system as Africa's culture of tolerance, whereby African communities had recourse to their 'cultural attribute of short memory of hate'. This means that the East African peoples accommodated each other readily and forged mutual relationships.⁶³ This spirit of accommodativeness and ecumenism became an asset for future integration of the region.

2.2 Colonialism and integration

The late 19th Century was characterized by merchant capitalism, which established trading networks throughout East Africa. The 20th Century on the other hand, was overwhelmed by the spirit of industrial capital for which East Africa was both a market for a European manufacturers and a source of raw materials and human resources. This would create wealth and alleviate the economic problems of metropolitan Europe. European colonialists in East Africa embarked on a program of

⁶² *ibid* P.57

⁶³ Mazrui, A., 'Development in a Multi-Cultural Context: Trends and Tensions' in I.Serageldin and J. Taborof, eds., *Culture and Development in Africa* (Washington, The International Bank for Reconstruction and Development:1994) pp 134-136

systematic integration for the region. In 1902 for instance, the British established the Court of Appeal for East Africa followed by the setting up of the East African Currency Board in 1905 and a Postal Union between Kenya and Uganda in 1911. A Customs Union was established by the British colonial administrators in 1917.

When the Germans in the Tanganyika were defeated by the British, the defeat put the three East African states under the British rule. The British attempted to harmonize their administration and control of native affairs in East Africa. They argued that a stronger political union would be a prerequisite for economic integration in East Africa.

The erection of the Kenya Uganda Railway 1896-1901 opened up the interior from the coast and literally speaking created the present day East African States.⁶⁴ This was followed by the surging of foreigners in large numbers who came with their foreign culture; this led to emergency of a black and white culture.

The white culture brought with it modern medicine, formal education and sophisticated weapons and was viewed superior by the locals who were subjected to the white man. Although colonization to a large extent accounted for the future development and cooperation in East Africa, It was the uniqueness of the region and the people who mainly contributed to the present day realities in East Africa.

One cannot talk of the history of Kenya, Uganda and Tanzania in isolation due to the commonalities shared by the three states. These include shared geographical location, climatic conditions, economic activities, culture and political administration. Even though political borders had later impacts on the region, it is

⁶⁴ Tidy, M., & Leeming D., *A History of Africa*, vol 2 (Hodder and Stoughton Ltd, 1981) p.127

important to note that these commonalities laid a strong foundation for the creation of the EAC.

Most European administrators preferred living in Kenya and the colonial government found it comfortable to carry out most of its developments in Kenya and only had branches in the other two states. A great urge for federation arose due to political and economic factors. The settlers felt that a Political Union could enable them to safeguard their interests, they also wanted to join forces in order to dominate the Africans who had lost their independence and a federation could make administration less expensive.

Following this, Sir Sydney Henn in 1924 moved in the House of Commons that the East African territories be co-coordinated. Henn urged the British Secretary of State for the Colonies to send to East Africa a special commission that would report to him on this possibility. He hoped that the special commission would also give him advice on how to run the programme of future economic development in East African region.⁶⁵ The British government established an East African commission chaired by colonial secretary Ormsby-Gore. The commission solicited views on a federation from Africans, people of Asian decent and Europeans.⁶⁶

The idea of a federation met great opposition from settlers who did not wish to be controlled from London. However a few settlers like Lord Delemare proposed it and argued that the federation would offer space for further spread of European 'civilization' from the already relatively 'civilized' European-settled British East

⁶⁵ Henn, S., 'Motion on Co-ordination of the East African Territories', *House of Common Debates* (United Kingdom), Fifth series, Vol 172, April 8th Cols 351-353 1924

⁶⁶Ormsby-Gore' W. *Report of the East Africa Commission* Cmnd.2387 (London: His majesty's Stationery Office, 1925)

Africa, Kenya to Uganda and Tanganyika. Further, Delemare and other supporters were interested in the labor force that they could obtain from other territories. The moderates among the settlers in Kenya opposed the idea, arguing that it was not the appropriate time to establish a federation. They instead advocated for the establishment of a white dominated strong central government in the hope that the federation would follow naturally.⁶⁷ Africans also vehemently opposed the idea. They were suspicious of the motives and intentions of the colonists and first wanted their grievances to be considered.

Instead of a federation, the commission recommended the setting up of a Governors conference which was to meet twice a year on matters relating to the three countries. Though the formation of the federation had failed, the spirit remained strong among the people but the strategy to be taken remained unclear.

In 1927 Ormsby-Gore renewed his call for a greater administrative and political unity in Eastern and Central Africa. he persuaded Lord Kennet to go out to East and Central Africa as chairman of a commission to look into the whole question of a federation or closer co-ordination between the several governments in that part of the world.⁶⁸ The Kikuyu Central Association (KCA) rejected the idea of a federation and reacted to the proposal by presenting a memorandum to Lord Kennet. KCA thought that a federation of British East African territories was likely to impose widespread domination of the white settler community in that region. These events slowed down the crusade of a federation and the integrative effort translated into the

⁶⁷ Ochwada, P. op.cit p.59

⁶⁸ Amery, L., *My Political Life*, Vol II,
(London: Hutchinson Publishing Group, 1953) pp361-362

governors' conferences in the 1930s. The British administrators consolidated the East African Services (EAS) in areas such as air transport, meteorology, customs, excise and income tax departments.

The end of the 2nd World War provided an impetus to the revival of a debate on the federation question. The war had made inter-territorial planning a useful ingredient in stabilizing colonial control. Britain adopted this strategy in managing its colonies in the post-world war period, after becoming conscious of the presence of Italy in the Horn of Africa when Italy entered the 2nd world war in 1940. Britain saw Italy as a threat to its territories. Consequently, Britain embarked on strengthening government regulation and coordinating its territories in East Africa.⁶⁹ In 1944 the Association of Commerce and Industry of East Africa criticized the existing system which vested power on the institutions of the individual territories. The Chamber of Commerce argued that decentralization meant that commercial activities in East Africa could be harmonized to speed up development of the region.

The business people who were dissatisfied with the political institutions and procedures directed their criticism to the governors' conferences which they saw as secretive and impotent in the face of new opportunities in the region. The governors' conferences used to decide on common legislation in private and then present identical bills to the three Legislative Councils.⁷⁰ This procedure influenced the

⁶⁹ Rothchild, D., Politics of Integration- The Second Attempt', in D.Rothchild ed., *Politics of Integration: An East African Documentary* (Nairobi: East African Publishing House, 1968) p. 47

⁷⁰ *ibid* p. 47

legislative Councils' effective participation in the process of governance but locked out the opinion of majority of Europeans and the subjects.

In 1945, the British Labor Party published its White Paper on 'inter-territorial Organization in East Africa'. The British government clarified its position for a closer political union in East Africa. The proposals aimed at providing a constitutional basis for the operation of common services, to secure more efficient coordination of policy and action, to associate representatives of the public of all races with management of common services and to provide effective means of enacting common legislation where it was required.⁷¹

The British imperial government stated further that the proposal did not mean political unification, but an arrangement purportedly designed for the people of East Africa to take responsibility for their own affairs. However, evidence pointed to the schemes of white colonists to obtain firm control over East Africa. The governors hoped to establish a constitution for the common services which would create both an East African High Commission and a legislative Assembly.⁷²

In 1948 the East African High Commission was set up to streamline the co-ordination of main services in East Africa. It constituted the colonial governors of Kenya, Uganda and Tanganyika. The legislative Assembly was vested with power to enact ordinances for the three territories. The East African High Commission met regularly in a year to deal with matters regarding policy related to supervision of the broad network of common services in East Africa. These services included

⁷¹ *ibid* p.48

⁷² *ibid* p.61

communications, meteorology, taxes, postal, currency, higher education, customs, excise duties, medicine and veterinary research.

The East African High Commission provided the impetus for functional integration of the common services. For example it facilitated the integration of the system of harbors and railways, the creation of an East African Navy and the expansion of Makerere College into the University College of East Africa.⁷³

The decolonization wind in the 1950s and 1960s affected the future of the East African High Commission. Tanganyika for example, after gaining independence in 1961 expressed its desire to continue with its participation in the common services provided that the East African High Commission did not infringe on the nation's sovereignty. In 1964, delegates from the three territories, United Kingdom and an observer from Zanzibar met in London and proposed that it would be in the interest of all the territories to ensure that whatever constitutional changes might take place in future, common services provided by the East African High Commission should continue to be provided on an East Africa basis.⁷⁴ They agreed that the East African High Commission be replaced with a new organization-the East African Common Services Organization (EACSO). They also agreed to enhance genuine and popular participation of the masses in the affairs of the region. EACSO was to be run by East African Common Services Authority (EACSA) which consisted of the principal elected minister and other high ranking officials who were responsible to the legislature in each of the three territories.

⁷³ Gimode, E. op.cit p. 10

⁷⁴ Ochwada, P. op.cit p62

The EACSA was to be supported by four groups, each consisting of one minister from each territory. The groups were to be responsible for formulating policy in their specified fields such as taxation, law and the general administration of the territory. Future efforts in the process integrating East Africa largely drew on the EACSO statutes. Banfield (1968) described EACSO as a more realistic organization in terms of its ability to meet changed and changing political situations and needs since it provided a forum for various experiments in inter-territorial, inter-governmental and inter-political arrangements.⁷⁵ EACSO's emphasis remained on economics and the state, thus efforts towards integration seem to have been patterned on this philosophy. The East African leaders of the post colonial state hoped to create a stronger economic entity of the region grounded in a federation. However the constitution and institutions inherited at independence proved to be major impediments in realizing these goals. Each of the three states entered the era of independence with its own specifically defined national goals. These goals would thereafter impact the process of integration.⁷⁶

2.3 Independence and integration

After independence the three East African countries had different development strategies, this made integrative efforts quite problematic. During colonialism, different countries became specialized in production and exportation of particular products and also developed specialized forms of transport and communications as

⁷⁵ Banfield, J., 'Excerpts from 'The Structure of the East African Common Services Organization' in D.Rothchild ed., *Politics of Integration: An East African Documentary* (Nairobi:East African Publishing House, 1968) p.261

⁷⁶ Ochwada, P. op.cit p.63

well as services such as re-insurance and tourism. For example Kenya increasingly specialized in food manufacturing while Uganda produced electricity and processed raw materials. Tanzania on the other hand became famous for its wildlife tourism.⁷⁷

Though the three East African heads of government understood the deficiencies of the institutions they inherited, they were hopeful of building an East African Federation. They envisaged the federation to be the most reasonable way of solving their economic problems and assumed the federation would lead to the achievement of Pan-Africanist ideals sought by independent African nations.⁷⁸ However the decolonization process had brought about a sense of ideological and national interests of the individual leaders and states. When it came to debates of integration a lot of energy was used on demands of national building and not on the federation.

In 1963 the three East African heads of government met in Nairobi and declared "We the leaders of the people and governments of East Africa assembled in Nairobi on 5th June 1963, pledge ourselves to the political federation of East Africa."⁷⁹ However the political federation was never realized because there was divergent views on what form the federation ought to take even within the three countries.

In Kenya for example, independence had been achieved with two political parties in play. They were KANU and KADU. The two parties propounded opposing

⁷⁷ *ibid* p. 64

⁷⁸ *ibid* p.64

⁷⁹ Adar and Ngunyi. *Op.cit* pp.398-400

political philosophies. KADU which comprised of tribes that considered themselves a minority believed their political interests were threatened under a unitary constitution which forced them to push for a regional (*majimbo*) constitution. They believed that only through a federation could their entrenched personal liberty be achieved where traditions would be maintained. KADU argued that any efforts to federate the three countries should never threaten the powers and authority of the regions in Kenya. KANU on the other hand supported the federation because they had vowed in their pre-election pledges to federate with Uganda and Tanganyika.

Kenya as a country had read the prevailing signs correctly and wanted to maximize the opportunity to reap from the federation. Economically, Kenya stood to gain enormously from intra-regional trade, since it had the monopoly of the common services of East Africa which were all located in Kenya. Kenya would therefore have an upper hand in economic development if the federation was to be actualized.⁸⁰

In Tanganyika Nyerere supported the federation because he believed that if the federation came to be, the economic benefits reaped would be equally distributed based on his socialist philosophy of nationalization. It has been argued that Nyerere wanted to rule the entire East Africa region and therefore discouraged multiparty politics which would have easily brought about competition in Tanzania and which would narrow his victory if elections were to be carried out. He therefore strictly advocated for “one party democracy”⁸¹ Nyerere was also too willing to federate with

⁸⁰ *ibid* pp.396-408

⁸¹ Carter, G. M., *Independence for Africa*
(New York: Frederica A.P,1961) pp.25-26

one state be it Kenya or Uganda. He therefore saw an opportunity to extend his philosophy of *ujamaaism* to the East Africa region and later to the rest of Africa.⁸²

In Uganda, there emerged two opposing views. The official government position which supported the federation as stated in the Nairobi Declaration and the position of the Kingdom of *Buganda* which opposed the idea. Prime Minister Obote had agreed to federate citing economic benefits for her people. The *Kabaka* and his parliament on the other hand, favored an autonomous status for the kingdoms, as enshrined in the federal constitution of Uganda. This constitutional procedure placed the Ugandan government in an awkward position and was forced to declare the Nairobi declaration unbinding.⁸³ Obote indicated that Uganda would not enter the federation immediately till they solve what he termed as “important issues”⁸⁴

Kenya and Tanzania considered forming a federation independent of Uganda, since Uganda’s position was uncertain. However the two countries had different views and expectations on this federation. Tanzania hoped for a closer political federation that would alter existing economic disparities within the region while Kenya maintained that a true federation must exercise control over foreign policy and foreign relations. In 1963 Kenyan and Tanzanians members of parliaments demanded the immediate federation of the three East African countries. Uganda was still sorting

⁸² Nyerere J.K., *Essays on Socialism*
(Dar es Salam: EAEPH,1976)

⁸³ Nye, J., *Pan Africanism and East Africa integration*
(Newyork:Harvarn University Press,1965) p.185

⁸⁴ Adar and Ngunyi op.cit p.400

out her domestic issues. Kenya changed heart and expressed that a federation of only two countries did not make sense.⁸⁵

In the mid-1960s the warmth with which the three states had received the idea of a federation had diminished and rancor between the East African states crept into inter-state relations. Tanzania and Uganda feared that Kenya would dominate the affairs of the federation since Kenya was strong economically. Kenya had since dominated the economy since it had inherited most property from British colonists. This led to a constrained relationship between the three states. After all Tanzania and Uganda wanted a just integration that would promote uniform economic growth.⁸⁶ These unfolding realities in East African states prompted the leaders to shun politics of political federation and each state carried on its defined national interests.

However, East African leaders still nursed the idea of integrating the region. Rothchild (1968) argues that a federation is a response to genuine needs and the desire to integrate the region would persist in years to come.⁸⁷ In the years that followed that the three states continued to specialize in different commercial, industrial and mining activities.

Economic disparities in the three states continued. This led to ideological differences among the three leaders and also led to loss of the gains towards integration. In 1964, the three countries signed the Kampala agreement to address the problems persisting in pursuit of integration in the region, basically to correct the

⁸⁵ *ibid* p. 400

⁸⁶ Ochwada, P. *op.cit* p.65

⁸⁷ Rothchild, D. *op.cit* p.1

imbalances prevailing in the common market among the three countries. Kenya failed to ratify the agreement insisting among other things that one single currency be maintained in East African which was unacceptable to the other two partners. This, among other reasons led to the non implementation of the agreement.⁸⁸

In June 1965, Tanzania proposed that each country should establish separate currencies and banks since the leaders were doubtful of the benefits of integration. Kenya which was thriving economically over positive inter-territorial trade welcomed the idea. This led to the collapse of the East Africa Common Market.

It was however still very necessary that a form of cooperation between these states be formed. So in 1965, the Phillip Commission was set up to look into possibilities of such cooperation. The commission recommended the setting up of the East African cooperation which could replace EASCO. This formed the basis of the treaty of economic cooperation in the three East African states. The commission also made a series of proposals including the maintenance of a common tariff against foreign goods entering the region. On industrialization, the commission recommended the maintenance of the licensing scheme created under the Kampala agreement. The commission also recommended the creation of the East Africa Development Bank (EADB) which would lend investment to the three states.⁸⁹

In 1967 the treaty for East African cooperation was signed in Kampala, Uganda, and the treaty recommended the creation of EAC. The major objective of the

⁸⁸ *ibid* p. 24

⁸⁹ Nyirabu M. *op.cit* p26

treaty was to strengthen ties between the three states so as to achieve balanced economic growth in Kenya, Uganda and Tanzania. The treaty was anchored on harmonization of economic policy, common institutions and a common market. The treaty did not call for equal distribution of benefits but for the economically less developed partners to benefit disproportionately.⁹⁰

The 1967 laid down new strategies for integration. However the East African leaders did not abandon the structures that they had inherited from colonialism but they just added new elements to them. The new elements hoped to correct economic disequilibrium in trade between the countries. According to Hazelwood (1992), the leaders thought that by putting into place a series of financial and administrative structures, they would effectively regulate the functioning of the Common Market Services.⁹¹ These blueprints did not facilitate the process of integration that the leaders had anticipated. Eventually the East Africa Common Market collapsed in 1977.

Factors associated with the collapse included: ideological rifts in the scheme, uneven levels of development, political trends in Uganda, lack of political commitment to the scheme and the fragility of EAC authority. Mutere (1996) asserts that:

⁹⁰ *ibid* p.27

⁹¹ Hazelwood, D., 'Economic Integration: Lessons for African Recovery and Development,' in A. Adedeji et.al., eds., *The Challenge of African Economic Recovery and Development* (London: Frank Cass, 1992)

'The institutional machinery of the EAC lacked an autonomous body with at least power of initiative and supervision. Consequently, the East Africa regional institutions could hardly play a dynamic and mediatory role in harmonizing partner states' national interests. Also unfortunate was the composition of the supreme making decision body, East Africa Authority, made up of the three countries' presidents. This increased the danger of transforming personal rivalries into more lasting inter-state conflicts.'⁹²

2.4 The Revival of EAC

After the collapse of the East African Community in 1977, the East African countries negotiated and signed the East African Community Mediation Agreement in 1984. Through this agreement the countries divided among themselves the assets and liabilities of the defunct community. This marked the end of structured tripartite co-operation among them, although bilateral relations between the three countries continued.⁹³

The Mediation Agreement in article 14/02 provided for possibility of co-operation among these countries in future. This provision facilitated a meeting of the then East African Heads of State in Harare, Zimbabwe at a satellite meeting within the Commonwealth meeting in October 1991. In the meeting, the Heads of State agreed to revive the East African Co-operation. This was soon followed by a meeting of the same Heads of State in Nairobi in November 1991 at which they issued a

⁹² Mutere, A. (1996b) op.cit p8

⁹³ EAC Development Strategy 2006-2010 p.1

agreed to revive the East African Co-operation. This was soon followed by a meeting of the same Heads of State in Nairobi in November 1991 at which they issued a formal communiqué to revive the co-operation and set up a Foreign Affairs Committee to work out EAC revival details.

In November, 1993 a Permanent Tri-partite Commission for East African Co-operation was established. It was to become the policy-making organ of the grouping. This process moved on to the establishment of the secretariat of the commission in Arusha, Tanzania on 14th March 1996. The Secretariat was small and lean in nature and most of its activities were to take place at the Partner States level. The setting up of this secretariat marked the beginning of the operation phase of the co-operation.

The secretariat in its operation adopted a development strategy approach to facilitate the implementation of the treaty in a systematic manner. The first East African Community Development strategy (1997-2000) was launched by the three Heads of States on 29th April 1997. The strategy contained several policy and programme areas of action for implementation, all of which were to be implemented by 2000. Within the period of this strategy, the three Heads of States negotiated the transformation of the Tripartite Agreement into a treaty.

In 1999 the treaty establishing EAC was signed in Arusha on 30th November 1999. The treaty came into force on July 2000 following the conclusion of the process of its ratification and deposit of the Instrument of Ratification with the Secretary General by all the three partner states. The EAC was inaugurated in January 2001. The community treaty laid the basis for negotiations of a complete trade regime and through a protocol for establishment of a Customs Union whereby all taxes on

goods between the countries of the community were to be removed and a Common External Tariff established. This was to be followed by a common market whereby full movement of persons, labor, services, capital, factors of production and the right of residence in the community were to be achieved, subsequently a Monetary Union by 2007 whereby the partner states would have same microeconomic policies and use a common currency and eventually a political federation with common foreign and security policies by 2013.⁹⁴

The vision of the EAC is to have a prosperous, competitive, secure and politically united East Africa while its mission is to widen and deepen economic, political, social and cultural integration in order to improve the quality of the people of East Africa through increased competitiveness, value added production, trade and investment. While the objectives of the EAC as provided in article 5 of the EAC treaty (1999) is to develop policies and programmes aimed at widening and developing cooperation among the partner states in political, Economic, Social and Cultural fields, Defense and Security among other areas of mutual benefits.⁹⁵

EAC aims at achieving its goals and objectives through promotion of a sustainable growth and equitable development of the region, strengthening and consolidating political, economic, social, cultural and traditional ties and associations between the peoples of the region in promoting a people-centered mutual development, enhancement and strengthening of participation of the private sector and civil society, mainstreaming of gender in all its programmes and enhancement of the role of women in development, promotion of good governance including

⁹⁴ EAC Development Strategy 2006-2010 p.2

⁹⁵ EAC Treaty 1999

adherence to the principles of democracy, rule of law, accountability, transparency, social justice, equal opportunities, and gender equality and finally promotion of peace, security and stability within the region.

The second EAC Development Strategy (2001-2005) saw the completion of the Customs Union Protocol, which was signed in March 2004 and which came to effect on 1st January 2005. The implementation of the Customs Union has successfully been done by the respective revenue authorities of the partner states albeit with many problems.

In 2004, the Heads of States set up a committee to work on fast-tracking the process towards achieving the political federation. The committee produced a report- The Report of the Committee on Fast Tracking East African Federation, November 2004. This report recommended the adoption of an overlapping approach to allow parallel implementation of activities where the time frame for the Customs Union would remain January 2005 to December 2009, but during the transitional phase 2006-2009 the implementation of the Customs Union, Common Market and Monetary Union would be enhanced sufficiently to lay conditions for the Political Federation for East Africa by 2010.⁹⁶ However the committee observed that the process of this approach would depend on the design and implementation of the strategic interventions during the transition phase and would also depend on political will, commitment and availability of resources. The recommendations of the report were to be discussed among stakeholders in the region for a period of one year with effect from May.

⁹⁶ EAC Development Strategy 2006-2010 p.5

The second EAC Development Strategy ended in 2005 and gave way to the third EAC Development Strategy (2006-2010) which places emphasis on consolidating the Customs Union and completing negotiations for a Common Market protocol while laying the necessary conditions for a Monetary Union and a Political Federation.

The EACU commenced operations on 1st January 2005 following the official launching ceremonies that were held simultaneously in Kampala, Nairobi and Dar es Salaam on 31st January 2004. The legal framework for the EACU is provided in the Treaty for the Establishment of the East African Community, Protocol on the Establishment of the EACU, The East African Community Customs Management Act 2004 and Annexes to the Protocol on the Establishment of EACU. The custom union has addressed the major challenges relating to uneven distribution of benefits and the need to put in place an efficient mechanism for sharing benefits and compensating losers; revenue loss due to over-dependency on trade taxes as the economic performance picks up; higher consumer costs that may arise by importing from a higher cost member (trade diversion). The common external tariff (CET) has been appropriately positioned to minimize trade diversion and low trade flows within EAC countries hence the need for deliberate efforts to enhance regional trade.⁹⁷

The protocol appreciates that the three partners are at different levels of development and therefore have differing comparative advantages.⁹⁸ In line with this the customs union for example requires Kenya to eliminate its tariffs on imports

⁹⁷ EAC, Report of the Committee on Fast Tracking East Africa Federation. Arusha. 2005, p.19

⁹⁸ Odhiambo W., Equity Issues in Regional Trade Arrangements: The Case of the EAC in Ajulu R., (Ed). *The Making of a Region: The Revival of the East African Community* (South Africa: Institute for Global Dialogue, 2005)p.145

originating from Tanzania and Uganda respectively with immediate effect on day one of protocol implementation. However, charges of gradually declining taxes remain for 859 products originating from Kenya and exported to Tanzania and 426 products originating from Kenya and exported to Uganda based on the asymmetry principle. These taxes gradually decline from 5% in 2005 and will reach 0% in 2010.

The implementation of the Customs Union in 2005 was followed by the enlargement of the EAC in 2007, which saw Rwanda and Burundi joining the community as provided for by the EAC treaty.

On 19th February 2008, a meeting of the High Level Task Force on the Negotiations for the Establishment of the EAC Common Market meeting was held in Arusha, Tanzania. These negotiations are ongoing and the EAC summit has called upon the task force to move expeditiously towards establishment of the EAC Common Market. The main aim of the Common Market is to secure the free movement of persons, labor, capital, services and the right of establishment and residence across the borders of Member States.

Talks on establishment of an EAC Monetary Union are also ongoing. In a meeting held by the EAC Monetary Affairs Committee meeting in Kampala, Uganda on 23rd January 2008, the committee was requested by the Summit to look into ways of fast tracking the Monetary Union so that it could be realized by 2012.

2.5 The Structure of EAC

The main organs are the Summit of Heads of State and Government; the Council of Ministers; the Co-ordination Committee; Sectoral Committees; the East

African Legislative Assembly and the Secretariat.

The Summit consists of the Heads of States of the partner States. Its function is to give general direction and impetus to the achievement of the objectives of the community. The Summit meets once in a year to consider the annual progress reports and other reports submitted to it by the Council of Ministers.

The Council of Ministers is the policy organ of the community. It consists of the Ministers responsible for regional co-operation of each Partner State and such other Ministers of the Partner State as each Partner State shall determine. The council's functions includes promoting, monitoring, and keeping in constant review the implementation of the programmes of the community and ensures the proper functioning of the regional organization. The Council meets in regular session twice a year, one of which is held immediately preceding a meeting of the Summit, and may also hold extraordinary meetings as necessary. The Council may establish Sectoral Councils to deal with other matters that arise under the Treaty, and the decisions of such councils will have the same effect as those of the Council of Ministers.

The Co-ordination Committee consists of the Permanent Secretaries responsible for regional co-operation in each Partner State and such other Permanent Secretaries of the Partner States as each Partner State may determine. The Committee reports to the Council of Ministers and co-ordinates the activities of the Sectoral Committee.

The East African Court of Justice has jurisdiction over the interpretation and application of and compliance of the treaty. Its membership consists of 6 judges who shall be appointed by the Summit from persons recommended by the Partner States.

The East African Legislative Assembly is the legislative organ of the EAC. Its membership consists of 27 elected members, nine from each Partner State, plus five ex officio members; the three Ministers responsible for regional co-operation, the Secretary General and the Counsel to the Community.

The Secretariat is the executive organ of the community. It is headed by the Secretary General who is assisted by two Deputy Secretaries General and includes the offices of the Counsel to the Community and other officials appointed by the Council. The core budget of the EAC's Secretariat is funded by equal contributions from Partner States. Regional Projects and Programmes are funded through the mobilization of resources both within and outside the region.

Autonomous institutions of the Community are the East African Development Bank, Lake Victoria Fisheries Organization, Inter-University Council for East Africa, East African Civil Aviation Academy, East African School of Librarianship; and such other institutions that as may be established by the Council.

It is however important to note that this membership is subject to change with Rwanda and Burundi having joined the EAC.

2.6 Conclusion

The process of integration in East Africa has come a long way, dating back to the 19th Century. The process has not been smooth and straightforward and has been constrained by several issues. Some of which the players have been able to successfully identify and deal with as the integration process progresses. The new EAC for example has learnt mistakes of the defunct EAC and is trying to avoid these

mistakes. However not all the problems have clearly been looked into and more solutions and suggestions are needed for effective integration in EAC.

THE EAC TREATY ADDRESSES NATIONAL INTERESTS OF THE PARTNER STATES

Introduction

This chapter is going to look at how the EAC treaty (1991) has addressed the national interests. It will look at what provisions the treaty has made on interests of the Partner States and whether these provisions promote or hinder the process of integration. Further it looks at the shortcomings of the treaty in addressing the issue of national interests and how these shortcomings hinder the integration process.

The treaty addresses the issue of national interests of Partner States through its organs and institutions. The Operational Principles of the Community in Article 7 provides for equitable distribution of benefits, the principle of symmetry, the principle of variable geometry, the principle of 'subsidiarity' and the principle of asymmetry.

Principle of Asymmetry

The principle of asymmetry is provided for in Article 7.b of the EAC treaty. Article 7.b of the treaty defines it as the principle which addresses variations in the economic integration process for the purposes of achieving a common market. These regional integration schemes involve countries that are unequal in

CHAPTER THREE

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3.1 Introduction

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The treaty addresses the issue of national interests of Partner States through its objectives, organs and institutions. The Operational Principles of the Community in article 7 provides for equitable distribution of benefits, the principle of complementarity, the principle of variable geometry, the principle of 'subsidiarity' and the principle of asymmetry.

3.2 The Principle of Asymmetry

The principle of asymmetry is provided for in Article 7.h of the EAC treaty. Article 1 of the treaty defines it as the principle which addresses variances of measures in an economic integration process for the purposes of achieving a common objective. Since regional integrations schemes involve countries that are unequal in

size and in different levels of development, for example Kenya in the EAC, asymmetric principle is therefore adopted to try and assist the disadvantaged members.

The principle forms the basis of equity in EAC. The issue of equitable distribution of benefits runs through the objectives of EAC. Article 5.3a states that the community shall ensure the attainment of sustainable growth and development of the partner states by the promotion of a more balanced and harmonious development of partner states.

Asymmetric treatment is necessitated by the recognition that undifferentiated treatment of unequal partners with differing initial conditions is fundamentally inequitable and can generate internal tensions which will handicap community building efforts.⁹⁹ The principle involves the dominant Partner State giving asymmetric treatment to the smaller Partner States for example in SADC, South Africa exercise asymmetry to the smaller Partner States, and in COMESA, Namibia and Swaziland are currently benefiting from the principle of asymmetry.¹⁰⁰

The EAC Development Strategy (1997-2001) acknowledged that where there are benefits accruing from regional integration, unequal distribution of benefits brings problems in many integration schemes including the defunct EAC. Unequal distribution of benefits was one of the reasons that led to the collapse of the defunct

⁹⁹ Bheenick, M R. *The Application of The Principle of Asymmetry; Draft Report Submitted to the EAC Secretariat.* (Arusha:2003) p. 27

¹⁰⁰ Odhiambo W., *Equity Issues in Regional Trade Arrangements: The Case of the EAC in Ajulu R.*, (Ed). *The Making of a Region: The Revival of the East African Community* p.146

EAC. Uganda and Tanzania perceived Kenya to have a competitive edge and therefore reaped huge income transfers at their expense. To avoid mistakes of the past, the new EAC treaty recognizes the different levels of social and economic development and preparedness in the three partner states and therefore embraces the application of the principle of asymmetry.¹⁰¹ This therefore means that Kenya should be making concessions to Uganda and Tanzania in all the sectors; however it has been noted that Uganda and Tanzania are rapidly catching up in industry and Kenya is losing its superiority.¹⁰² This brings controversy on how the principle of asymmetry should be applied and its consequences and this may slow the integration process.

The EACU Protocol appreciates that the three partners are at different levels of development and therefore have differing comparative advantages.¹⁰³ In line with this, article 11 of the Protocol provides for transitional measures on the elimination of internal tariffs. Kenya, for example is required to eliminate its tariffs on imports originating from Tanzania and Uganda respectively with immediate effect on day one of protocol implementation. However, charges of gradually declining taxes remain for 859 products originating from Kenya and exported to Tanzania and 426 products originating from Kenya and exported to Uganda based on the asymmetry principle. These taxes gradually decline from 5% in 2005 and will reach 0% in 2010.

The protocol also provides some safeguard measures to ensure equity among the Partner States. Articles 19 and 36 of the protocol provide for safeguard measures

¹⁰¹ M. Ahmed. (Ed), *Deepening Regional Integration of the East Africa Community* op.cit p.134

¹⁰² Odhiambo W. op.cit p.146

¹⁰³ Ibid p.145

in the event of serious injury occurring to the economy of a Partner State following the application of the provisions of the protocol.¹⁰⁴ However the articles do not specify the exact measures to be taken but leaves it to the council to approve the measures to be used. Article 12.3 provides for the Council to review the CET structure and approve measures designed to remedy any adverse effects which any of the Partner States may experience by reason of the implementation of the CET or, in exceptional circumstances, to safeguard community interests.¹⁰⁵ Despite the provisions of safeguard measures, the treaty does not cover joint ownership. Despite the fact that ownership of EAC assets is communal, it takes a private sector approach meaning that in the event of collapse, the need for asset distribution would be minimal or absent.¹⁰⁶

Finally, the protocol also provides measures to ensure fair trade among the Partner States. These include article 14 which provide for rules of origin, article 16 which provide for anti-dumping measures and article 18 which provide for countervailing measures.

¹⁰⁴ Articles 19 and 36 of the EACU protocol

¹⁰⁵ Article 12.3 of the EACU protocol

¹⁰⁶ Odhiambo W. op.cit p.147

3.3 The Principle of 'Subsidiarity'

The principle of 'subsidiarity' which is provided for in Operational Principles of the Community in article 7.d of the EAC treaty, emphasizes the importance of participation and involvement of a wide range of stakeholders in the process of integration. This implies that all actors in the region will be availed space to influence developments in the regional process and highlight sensitivity to various groups. The EAC treaty in article 128,129, 121 and 122 recognizes the critical role of integrating key stakeholders such as civil society, women and the private sector in the development agenda of the community with the intention of empowering effective participation of the citizenry in matters of economic development and creating conducive environment for effective participation. These provisions try to make the community a people owned initiative and at the same time endeavors to cultivate a sense of East Africaness.

There has been campaigns to raise public awareness of the EAC and its objectives and activities. This has been received differently by the people of East Africa who have had different reactions to the integration. There are fears that the Custom Union may again lead to imbalances in sharing of benefits among partner states. Tanzania and Uganda during negotiations strongly brought up the issue and made proposals on how to handle the issue.¹⁰⁷ Moreover Tanzanians are very suspicious of Kenyans; they fear that free movement of people and labor under the Common Market will mean that Kenyans will just walk into Tanzania and grab all the

¹⁰⁷Odhiambo W. op.cit p.136

land and start agricultural production. In addition, Uganda's East African MPs are very skeptical of Kenya who they see as having a 'big brother' approach in the Community and who, according to them is showing little commitment to the Community affairs, they falsely accused Kenya of failing to honor its financial obligations to the Community early this year.¹⁰⁸

The reservations that some East Africans have especially the Tanzanians have been slowing the integration process. The ongoing talks on the Common Market have been slowed by Tanzania which is requesting for adequate time to integrate.¹⁰⁹

3.4 The Principle of Variable Geometry

This is one of the operational principles of the community provided for in chapter 7. The principle allows for progression in co-operation among groups within the community for wider integration schemes in various fields at different speeds.¹¹⁰ Article 130 provides for relations with other regional and international organizations and development partners. The Partner States are free to pursue their national interests with other international organizations and especially those whose activities have a bearing on the objectives of the Community. All three countries are members of World Trade Organization (WTO) and the Cross-Border Initiative (CBI);¹¹¹ Kenya and Uganda are members of the Common Market of South Africa

¹⁰⁸ The East African, May 26-June 1, 2008 p.27

¹⁰⁹ The East African, June 2-8, 2008 pp.1-2

¹¹⁰ Chapter 7.e of the EAC Treaty (1999)

¹¹¹ CBI is a common policy framework to facilitate trade and economic integration between its fourteen members (Burundi, Comoros, Kenya, Madagascar, Malawi, Mauritius, Namibia, Rwanda, Seychelles, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe) CBI is supported by the International Monetary Fund, the World Bank the European Union and the African Development Bank.

(COMESA);¹¹² Tanzania is a member of the Southern African Development Community (SADC).¹¹³ However overlapping membership was sighted as one of the factors that led to the collapse of the defunct EAC, since overlapping membership dissipates energies and resources in activities that could be effectively managed in one organization.¹¹⁴

We could argue this to be a failure of the treaty. By encouraging overlapping membership, the Partner States will pursue their national interests in other international organizations and may be less enthusiastic about EAC, constraining the integration process.

3.5 Settlement of Disputes

The EAC treaty appreciates the fact that each Partner State in the community is sovereign and has its own national interests. However in this kind of a setup and in the integration process, disputes are bound to arise.

The treaty therefore provides for the East Africa Court of Justice (EACJ) to settle and determine disputes that may arise under the treaty. The EACJ is one of the organs of the EAC and also a judicial body established under article 9 of the treaty. Article 23 of the treaty outlines the role of the court which is to ensure the adherence to law in interpretation and application of and compliance with the treaty.

¹¹²COMESA is a preferential trade agreement between 20 members (Angola, Burundi Comoros, Democratic Republic of Congo, Djibouti, Egypt, Eritria, Ethiopia, Kenya, Madagascar, Malawi Mauritius, Namibia, Rwanda, Seychelles, Swaziland, Uganda, Zambia and Zimbabwe and Sudan.)

¹¹³SADC is a PTA between its members South Africa, Angola, Botswana Swaziland, Tanzania, Zambia, Zimbabwe, Malawi, Mauritius, Namibia, Seychelles, DRC and Lesotho.

¹¹⁴Goldstein, A. & Ndung'u. *Regional integration Experience in the Eastern African Region* OECD Development Centre, Working Paper No. 171 p.30

Articles 27, 28, 29 and 30 of the treaty sets out the jurisdiction of the court. This jurisdiction includes references by Partner States, references by the Secretary General and references by legal and natural persons. The court also has jurisdiction in article 32 to hear and determine any matter arising from arbitration clause and special agreements

Article 33 of the treaty recognizes the need to involve the national courts of the Partner States in resolving disputes. However Article 33.2 provides that decisions of the EACJ on the interpretation and application of the treaty shall have precedence over decisions of national courts on similar matters. This creates a conflict of interests, since the Partner State involved would wish to take the decision made by its national court. The national courts are likely to be biased and may make decisions favoring its respective nation, after all the State in pursuit of its national interests in the Community.

3.6 Decision Making Processes

When it comes to decision making in EAC, the treaty fails to empower and give capacity to the secretariat and other organs. The criteria and procedures which they use to ensure that adequate consultations undertaken at the Partner State level for her to act are currently foggy and unwieldy. The current EAC protocol on decision making is brief and only applies to the Council of Ministers.¹¹⁵

Article 71 of the treaty empowers the secretariat to carry out the role of defining regional requirements and best practices for the community. However, the

¹¹⁵ EAC Development Strategy 2006-2010

secretariat has sometimes tended to be a forum where officials from Partner States negotiate to harmonize their national positions and interests rather than focus on adapting or national positions to regional standards requirements. This is contrary to article 72 which provides that the staff of the community shall refrain from any action which may adversely affect on their positions as international civil servants who are responsible only to the community.¹¹⁶ This is a limitation of the treaty since a lot of time is wasted as officials try to harmonize their national interests constraining the integration process.

Further, collective decisions agreed at EAC level are left to governments of Partner States to implement. National interests of the Partner States influence the implementation. There may be delays or non-implementation of these decisions especially when they maybe interfering with their national interests. Here the treaty fails since it does not provide for a legal executive authority to enforce implementation of community programmes and laws. However, this may also be interpreted as non interference of the sovereignty, and national interests, of Partner States by the community. At the same time scholars have argued that for integration to be successful there is need for Partner States to transfer some power to the supra-national body.¹¹⁷ Integration has been defined as the process by which supranational institutions come to replace national ones.¹¹⁸ this then means states have to give power and sovereignty to higher authorities or shift their loyalties, expectations and

¹¹⁶ Article 72 of the EAC Treaty 1999

¹¹⁷ Goldstein, A. & Ndung'u. *Regional integration Experience in the Eastern African Region* OECD Development Centre, Working Paper No. 171 p.29

political activities toward a new centre, whose institutions will demand jurisdiction over the pre-existing national states. This seems not to be the case in EAC and makes us question the institutions and structures of EAC especially in regard to forming a political federation.

3.7 Legislation

Article 9 provides for the establishment of the East African Legislative Assembly (EALA) and Article 49 establishes it as the legislative organ of the community. Membership of the assembly as provided in article 28 consists of twenty seven elected members (nine from each Partner State), five ex-officio members consisting of the Minister for regional co-operation from each Partner State and the Secretary General and the Counsel to the community.¹¹⁹

The treaty recognizes that each Partner States has its own interests. It therefore gives the national assemblies of the Partner States the mandate to elect the nine members, further it also gives the national assemblies the freedom to determine the criteria to use when electing the members. Article 50 provides that the national assembly of each Partner State shall elect, not from among its members, the nine members of the assembly, who shall represent as much as it is feasible, the various political parties represented in the National Assembly, shades of opinion, gender and other special interest groups in that Partner State.¹²⁰

¹¹⁹ Article 9 of the EAC Treaty (1999)

¹²⁰ Article 50 of the EAC Treaty (1999)

However this representation has been questioned; first, scholars have argued that nine elected members are too few to represent the diversity of the countries they represent and second, EALA giving equal slots to each Partner State regardless of population does not also represent the diversity of these countries.¹²¹ This then means that though the treaty tries to recognize the national interests of the Partner States when it comes to representation in EALA, it fails to some extent because there is no sufficient and diverse representation of the peoples of East Africa.

Article 65 provides for the relations between the Assembly and the national assemblies of the Partner States. This article aims to create a participatory structure and foster co-operation between the two assemblies. However it has been argued that in this arrangement, an implicit conflict of interests is likely to emerge between the national and regional parliamentary assemblies,¹²² and this will constrain the integration process.

The membership of the council as provided in article 13 consists of the Ministers responsible for regional co-operation of each Partner State and such other ministers of the Partner States as each Partner State may determine. The council has powers to make laws. Article 14.2 gives the council the power to make regulations, issue directives, make decisions, make recommendations and give opinions in accordance with the provisions of the treaty. The council may than be used as a forum by the ministers to advance their respective state's interests at the expense of

¹²¹ Oloo A., *The EALA and the National Assemblies of Partner States: Conflict or Harmony?* in Ajulu R., (Ed). *The Making of a Region: The Revival of the East African Community* op.cit p.81

¹²² *ibid* p.88

community interest. This is likely to result to have some negative impacts on EAC constraining the integration process.

3.8 The Summit

The Summit as provided for in articles 10 and 11 consists of the Heads of States of the Partner States and its function is to give general direction and impetus to the achievement of the objectives of the community, evaluate the progress of the Community, make appointments, review the state of peace security and good governance within the Community, delegate powers and functions, gazette rules and orders in the treaty, assent to bills among others. The Summit can be said to be the most powerful organ of the Community since it has most power conferred to it by the treaty than any other organ. Everything that is decided by the other organs is subject to the consensus of the Summit. The supreme constitutional powers rest with the Summit, the Heads of State, for example recently made a decision to change the rules regarding the appointment of judges to EACJ. The Summit functions on consensus; hence there is no certainty of unanimity of decisions nor is the Summit directly accountable to the people of East Africa. This means that the success and performance of EAC depends on what the Heads of state do or think: it depends on their national interests.

A Head of State is tantamount to the states' national interests, and is most likely to be always in pursuit of these interests in the Community. For example when it comes to assenting to bills, making appointments and delegating the Heads may be biased since they have some inherent interests. Though Partner States are brought

together by convergent national interests there are divergent national interests which the Heads of State pursue. We may then argue that the most powerful organ in EAC (the Summit) may be an impediment, since conflicting interests of the Partner States may constrain integration. The relations and goodwill of the Heads of State will also determine the success of the integration process. One reason sighted for the collapse of the defunct EAC was lack of political will among the then Heads of State.

Scholars have argued that new efforts towards co-operation should begin by exploding the myth that politicians should have the monopoly in cooperative undertakings. They note that Heads of state dominate politics by manipulating state resources forming the base on which patron-client networks are constructed for the purpose of political control and legitimacy. This results to transformation of the state into a self- serving institution and it gives rise to personalization of leadership and authoritarianism.¹²³ They argue that the new wave of cooperation would have to empower other actors in the political arena.¹²⁴ This is not the case in EAC where the Summit is the most powerful organ with the Heads of State being the key players.

3.9 Withdrawal, Suspension and Expulsion of a Member

The treaty appreciates the fact that national interests may vary and or change with time and therefore provides for withdrawal, suspension and expulsion of a Partner State in Articles 145,146 and 147.

¹²³ Nyirabu, M. op.cit.,p. 35

¹²⁴ ibid p.35

Article 145 provides for withdrawal of a member. Article 145.3 states that even after withdrawal the state shall remain liable to discharge all subsisting obligations and long term commitments incurred during membership. This condition also applies in the case of suspension and expulsion in articles 146 and 147 respectively. This condition seems unrealistic because a member who is withdrawing or who has been suspended will find it in the least of her interest to continue honoring obligations or commitments to the Community. The Community also lacks a mechanism or an overall body to enforce this condition. Apart from sanctions, suspension and expulsion the treaty does not provide other clear-cut provisions on how the Community should treat a rogue member.

3.9 Conclusion

The EAC treaty (1999) through its principles, objectives, organs, institutions and protocols and has addressed some issues on national interests of the Partner States. This discussion has shown how some of the treaty's provisions on national interests may constrain the integration process. However, the treaty does not also cover all the issues on national interests for example it does not provide clear guidelines on who should enforce the treaty and how the treaty should be enforced. EAC lacks an overall authority to enforce treaty. This causes delays, non-implementation and sometimes dishonor of resolutions passed by the treaty itself.

CHAPTER FOUR

KENYA'S NATIONAL INTERESTS IN EAC: A CONSTRAINT TO THE INTEGRATION PROCESS

4.1 Introduction

This chapter will specifically look at Kenya's national interests in EAC and how these interests constrain the integration process.

Rosenau (1976) posits that international organizations are rationally ordered instruments for the achievement of stated goals and that international organizations are created because states find they cannot by themselves perform certain tasks which have been their tradition preserve.¹²⁵ This sense of inadequacy gives rise to co-operation towards shared objectives in which members pursue different but convergent goals. However the fact that the individual state's goals (interests) are divergent may constrain the co-operation.

Baregu (2005) argues that there are four types of rationales or imperatives that lie behind the formation and sustenance of regional integration schemes. These are classified as affection, gain, threat, and power. He defines imperatives as the kind of factors that create impetus, and give rise to the drive and yearning for, integration among members.¹²⁶ These imperatives are Partner States national interests which compel states to integrate. Nying'uro (2007) argues that these imperatives are 'strong

¹²⁵ Rosenau, J., *World Politics*
(New York : Macmillan Publishers, 1976) p.627

¹²⁶ Baregu, M., 'The African Economic Community and the EAC: Any Lessons from the EU?' in Ajulu R., (Ed). *The Making of a Region: The Revival of the East African Community* pp 46-48

forces' which compelled the EAC Partners States to come to the table in 1984 and vowed to revive the community only five years after proudly walking away from each other in 1977.¹²⁷ Speaking on the same, the Ugandan First Deputy Prime Minister (2000) said:

“...there was a sense of urgency in reformulating the regional organization. Sixteen years of dispersal had led to great loss of opportunities. The region had lagged behind most others in development; and the push to catch up became powerful, particularly on the objective to arrest the trend of poverty.”¹²⁸

4.2 Kenya's National Interests in EAC

The main national interest for Kenya in the EAC is economic growth and development. The main drive for Kenya to join the EAC stems from the need for a larger regional market for its goods and products with the resultant benefit of uplifting the standards of living for its people. Kenya is said to have felt the consequences of the defunct EAC more than the other Partner States because it lost

¹²⁷ Nying'uro, P., 'Regional Integration in East Africa: The Past, Present and The Future' Paper Presented at the Regional Conference of Capacity Building For the Fast Tracking of the EAC Common Market, January 29-30, 2007, Nairobi p.7

¹²⁸ East Africa Customs Union: Information and Implications, Paper by EAC Secretariat, Arusha, 2002 p.8

an important market.¹²⁹ The EU's restrictions placed on some Kenyan goods like fish, flowers and sugar has also made Kenya to focus on the EAC market.

Regional integration is a way to survive in the contemporary globalization era where small national economies like the ones in East Africa may not effectively compete in the prevailing atmosphere of 'near cut-throat competition.' The fear of Kenya being swallowed if it seeks integration into the global economy individually has compelled it to seek integration into the global economy through EAC.¹³⁰ Kenyan's former president, Moi, stressed the need to maintain the momentum of co-operation in view of the importance of regional integration of the three Partner States into a solid bloc with a single large trade and investment area that can withstand the adverse effects of globalization.¹³¹ President Kibaki has also given his position on this; he stated that he is a firm believer that regional integration in the contemporary world is not a choice but a necessary strategy for rapid and sustainable development.¹³² It is no wonder Kenya has been more enthusiastic about the EAC than the other Partner States. While other Partner States are concerned about other issues, the speed of implementation of the phases of the EAC has been of more concern to Kenya.¹³³ This, among other things has made the other Partner States develop concerns and fears about EAC, especially in relation to Kenya.

Tanzanians are concerned about the potential loss of investment and employment. They argue that industries and other economic activities may cluster in

¹²⁹ Nying'uro, P. *op.cit* p.7

¹³⁰ *ibid* p.7

¹³¹ Report of the 1st Extra-ordinary Summit of EAC Heads of State Kampala, Uganda, April 2002. p.2

¹³² Baregu, M. 'Towards the Federation of East Africa: The Logic of Fast-Tracking'. p.4 2005

¹³³ Odhiambo, p., *op.cit* p.135

Kenya because Kenya has more attractive locations for business. They also argue that removed barriers to trade and investment may heighten the asymmetry between groups that can cross borders (mostly Kenyans) and those that cannot (mostly Tanzanians). This may make the services of larger segments of unskilled workers in Tanzania and Uganda more easily substitutable. Moreover, free movement of labor may negatively impact on employment in Tanzania as the more skilled and qualified labor moves from particularly Kenya to Tanzania.¹³⁴

There are concerns about the loss of market which may arise due to trade diversion in favor of the more competitive industries located in Kenya. There are also fears on loss of land. Tanzanian fears that implementation of the Common Market Protocol, particularly the components that relate to Right of Property and Residence, might see many Kenyans migrate to Tanzania and to take up the land. These fears have greatly contributed to slowing down the integration process. They also bring suspicions among Partner States which constrain the process. Tanzania for example has reservations for the whole process and has been requesting for more time to integrate.

In the ongoing negotiations on a regional Common Market, the Uganda Manufacturers Association and the Private Sector Foundation of Uganda had asked their government for a combination of protective tariffs, compensatory mechanisms and regulatory frameworks to be put in place for another 10 years to address imbalances in areas such as construction, education, and insurance in order to allow local industry to catch up with its regional counterparts. The private sector had argued

¹³⁴ Report on the 6th summit of the EAC Heads of state, Arusha, Tanzania, November, 2004 pp55-56

that the sector was a particularly sensitive area as better-placed construction firms from Kenya were likely to swarm into the market and take over jobs currently being done by Ugandan local contractors. However the Ugandan government has rejected the plea arguing that continued protection would only hurt consumer's interests in sectors such as housing where there is a huge deficit in the stock balance of houses.¹³⁵ Tanzania and Uganda fear that Kenya is likely to dominate the region, all these fears about Kenya's enthusiasm in EAC are likely to constrain the integration process and interfere with the set time frame of achieving a Political federation by 2013.

Peace and security along the Kenyan-Ugandan border is also an imperative for Kenya to join the EAC. Deutsch (1971) argues that integration is not only for material gain but can also create secure communities.¹³⁶ Thus Kenya sees EAC as platform for joint strategies for combating cattle rustling and other insecurities along that border. For example, Kenyan and Ugandan authorities have had to deal with cases of cross-border rustling and banditry involving the *Pokot* of Kenya and the *Karamojong* of Uganda for a long time.

The affection imperative which is emotive and refers to a situation where countries come into an integration arrangement because they have a lot in common and feel some bonds of affection.¹³⁷ East African countries are connected by a common language, a common colonial heritage and cross- border affinities between different ethnic groups. The first Article of the Preamble to the treaty reads 'Whereas

¹³⁵ The East African Standard, August 18-24, 2008 p.2

¹³⁶ Deutsch, K. *The Analysis of International Relations* (Englewood: Prentice Hall, 1971) p. 343

¹³⁷ Baregu, M. *op.cit* p.47

the United Republic of Tanzania, the Republic of Kenya and the Republic of Uganda have enjoyed close historical, commercial, industrial, cultural and many other ties for many years;’ Addressing the 1992 Summit of EAC Heads of State President Moi stated that the affection imperative was the basis of EAC integration.¹³⁸ For Kenya, the affection imperative seem to be of main interest, however, this has brought suspicion and fear from the other Partner States who assume there to be an ulterior motive for Kenya’s keenness on EAC. For example Tanzanians are very suspicious of Kenyans; they fear that free movement of people and labor under the Common Market will mean that Kenyans will grab their land and take over their jobs and businesses among other. This has contributed to slowing down the integration process.

Security in the region is important for the success of EAC, the internationalization of conflicts and crime has challenged the legitimacy and capacity of EAC states in providing human security. The objectives of the EAC as provided in article 5.1 of the treaty is to develop programmes among the Partner States in political, economic, social and cultural fields, research and technology, defense, security and legal matters, for their mutual benefit.

Insecurity in East Africa takes many forms, cattle rustling for example has clearly become an economic activity for some population categories in Kenya. Peace and security is an imperative for Kenya to join the EAC.¹³⁹ For a long time now,

¹³⁸ Report of the 1st Summit of EAC Heads of State Kampala, Uganda, April 1992. p.2

¹³⁹ Nying’uro, P. op.cit p.8

Kenyan and Ugandan authorities have had to deal with cases of deadly cross-border rustling and banditry involving the *Pokot* of Kenya and the *Karamojong* of Uganda. Deutsch (1971) argues that integration is not only for material gain but can also create secure communities.¹⁴⁰ Thus Kenya sees EAC as a platform for joint strategies for combating cattle rustling and other insecurities along that border.

Report for!

Dealing with cattle rustling is however complicated, livestock pastoralists in Kenya lack government support. The absence of a national policy for pastoralist economies marginalizes this group compelling them to turn to illegal activities for sustenance. For their national interests, the Kenyan and Ugandan governments are believed to be arming the *Pokot* and the *Karamojong*.¹⁴¹ The issue is further aggravated by the nature of politics in Kenya where negative and exclusionary politics have contributed to mistrust and distrust among these marginalized communities.

Power as an imperative refers to the situation where a regional hegemon forces the neighborhood into an integration arrangement.¹⁴² In EAC Kenya can be said to be the hegemon since it is the most powerful in the region. Yet Kenya for its own national interests is reluctant to act as one. Scholars have argued that for regional integration to be successful effective leadership is necessary. This leadership may take two different forms. It can be explicit with the largest country in the region leading the way, proposing policies and implementing tariff reductions and other

¹⁴⁰ Deutsch, K. *The Analysis of International Relations* (Englewood: Prentice Hall, 1971) p.

¹⁴¹ See Ploughshares Report for Armed Conflicts, 2007.

<http://www.ploughshares.ca/libraries/ACRBriefs-Uganda.htm>

¹⁴² Baregu, M. op.cit p. 48

liberalization measures or it could be implicit with one country, not necessarily the largest, setting a benchmark and inducing others to follow and imitate.¹⁴³ Kenya is not particularly committed to offering this leadership and Uganda's credibility as a role model has been said to be fading away for a number of reasons. Lack of effective leadership in EAC has constrained the integration process. This is especially so when it comes to making and implementing collective decisions and resolutions.

Closely related to power is the imperative of sovereignty. Kenya, which is the most powerful country in EAC, passionately guards her sovereignty. In the 8th Summit of the EAC Heads of State (2006), President Kibaki observed that attempts by any one organ to exceed its powers or disregard national sovereignty at that point of the integration process would undermine the treaty and the vision of the peoples of East Africa. He added that it is only through respect for national sovereignty and strict observance of the treaty's provisions that confidence building and commitment will be sustained in the integration process.¹⁴⁴ The fear of loss of sovereignty especially in the Political Federation is manifested in a number of ways including among others: loss of power at political level, loss of decision making, and loss of flexibility in exercising powers at national level.

The failure of the federal project in the defunct EAC has been partly attributed to the issue of sovereignty. The determination of the leaders in the three countries to retain sovereignty and protect the independence of their respective countries was very

¹⁴³ Goldstein, A. & Ndung'u. *Regional integration Experience in the Eastern African Region* OECD Development Centre, Working Paper No. 171 p.32

¹⁴⁴ Report on the 8th Summit of the EAC Heads of State, November 2006, Arusha, Tanzania. P7

strong.¹⁴⁵ The leaders were also determined to strengthen their political parties and consolidate their own individual political leadership. The same case seems to be happening in EAC today, Kenya is not willing to cede sovereignty to EAC and so are the other Partner States. Moreover the leaders are more interested in their political survival than a political federation. However it is worth noting that there can be no federation without the Partner States ceding sovereignty to the centre. So if East Africa were to have a federation by 2013, which is only five years to go, each state by now should have ceded over half of their sovereignty.¹⁴⁶ Kenya's fear of loss of sovereignty is an obstacle to deeper integration in EAC.

Kenya's domestic politics and issues have greatly affected the East Africa region and the EAC. The on going democratic transitions in Kenya, Uganda and Tanzania are expected to produce governments that are accountable transparent and responsive to peoples wishes. Under such circumstances, it means that decisions pertaining to EAC (regional integration) are not likely to be made whimsically by leaders. Democracy at national level is also likely to create an environment for the evolution of strong civil society organizations that can play their role at regional level.¹⁴⁷ However the democratic transition in the region is facing problems. Kenya, which was believed to be moving in the right direction democratically, has had a lot of problems after the 2007 marred general elections which were followed by a

¹⁴⁵ Ahmed, M., (Ed), *Deepening Regional Integration of the East Africa Community* (Addis Ababa: DPMF, 2005) p.34

¹⁴⁶ Nying'uro, P. op.cit p.19

¹⁴⁷ *ibid* p.19

disturbing and tragic environment. This brought with it post-election violence, loss of lives, destruction of property and political instability among other vices.

The post-election environment in Kenya, which is EAC's main economic powerhouse, greatly affected the region and EAC. There were far reaching negative socio-economic consequences to Kenya and the Partner States. The prices of goods and products went up due to interruptions of the road transport from Mombasa to the region. The clearing of goods at the port of Mombasa was also interrupted; as a result there were severe shortages of goods and products in the region. Uganda was hit by a severe shortage of petroleum which was a major challenge. Generally, trade and businesses in the region were affected. EAC's viability was put to test and lessons should be learnt from such events. The EAC implementation timetable was interfered with as meetings were postponed, implementations delayed and attention diverted due to the environment in Kenya. All these had adverse effects to the EAC's integration process thus constraining it.

Kenyan domestic politics has influenced development in the region. The state of infrastructure in the country is in a sorry state making the cost of doing business in the region very high. According to the EAC Director of Customs, Kenneth Bagamugunda, East Africa is still not trading with itself because of the costs associated with congestion and delays at ports, telecommunication, poor roads and railway networks and prohibitive air travel costs which all undermine the relative competitive advantage of doing business in the region.¹⁴⁸ This has rendered the

¹⁴⁸ The East African Standard, August 18-24, 2008 p.7

regions products to be unable to compete with cheap and illegal imports and also uncompetitive in export markets.

1020
The privatization process of the 900- kilometer Kenya-Ugandan railway line connecting Mombasa to landlocked Uganda has brought a lot of controversy. The 25 year concession signed between Rift Valley Railways (RVR) and Kenya and Uganda has proved very problematic. RVR has been accused of mismanaging the former Kenya Railways Corporation (KRC) leading to deteriorating performance of the railway network. RVR has also been accused of not paying concession fee and as a result Kenya and Uganda have threatened to pull out of the concession.¹⁴⁸ On its part, RVR claims to have been paying the concession fees but, as per the concession agreement, a Political Risk Event was declared because the railway line was closed early in the year (2008) due to political rioting in Kenya. These disagreements on the concession have constrained the process of improving on the regions infrastructure and more business opportunities in EAC get lost.

Some stakeholders in EAC argue that the RVR concession is not a solution to the railway transport; instead they propose a new railway network. In an investment conference in Kigali, the chairman of the East African Business Council emphasized that;

“No amount to panel beating and massaging of the existing narrow gauge railway line and its wagons will work. It is only in East Africa that this type of railway network exists today in the world. The network thus belongs to a ‘Railway Museum.’ There must be deliberate actions towards finalizing the Master Plan for the

¹⁴⁸ The East African Standard, May 26-1st June, 2008 pp1-3

modernization of the railway network. A new railway network must be given priority...”¹⁴⁹

The complete overhaul and modernization of the railway network in East Africa will increase the speed of movement of bulk cargo into and outside the region and in return save on road destruction by heavy trucks and reduce costs of doing business in the region.

The privatization of the telecommunications sector in Kenya has also been politicized, delaying the process and in turn having adverse effects on Information Communication Technology (ICT) related infrastructure in the region, for example the delay in laying of the fiber- optic cable. This increases the cost of doing business in the region and generally constrains EAC integration.

Further for its own interests, Kenya continues to impose massive Non- Tariff Barriers (NTB) on its road. NTB are administrative and technical requirements imposed by a Partner State in the movements of goods. Article 75 of the EAC treaty (1999) which provides for establishment of a Customs Union and Article 13 of the EACU Protocol requires Partner States to remove all existing NTB on the importation into their territory of goods originating from the other Partner States and thereafter to refrain from imposing any further NTB.

¹⁴⁹ The East African Standard, July 7-13 2008 p.27

The Northern corridor comprising 1,333 kilometers of rail network from Mombasa to Kampala and the road routes from Mombasa, via Malaba, and Busia to Kampala alone, has 47 road blocks, while the Central corridor has an equally large number of road blocks.¹⁵¹ The justification for this is provision of security and stopping diversion of transit and counterfeit goods, ironically volumes of counterfeit goods increasingly find their way into the domestic market despite these road blocks. This is due to corruption and mismanagement of the road blocks.

The NTB, and police checks and road blocks slow down the movement of goods on transit. Further, there are no formal monitoring mechanisms for truck drivers, cross-border traders and clearing agents to report their experiences with non-tariff trade barriers. These barriers increase the costs of doing business and have even discouraged investors into the region. This has led to businesses in the EAC region opting to import most of their requirements from the rest of the world. This then beats the purpose of the Customs Union and the Common Market which should allow the smooth flow of goods and services. Above all it constrains the integration process.

Finally, in a regional agreement there are losers and winners. The existing economic structures and economic sizes are bound to bring imbalances in the distribution of benefits in EAC. Kenya which has the largest economy has a comparative advantage, and is therefore bound to reap more benefits than the other Partner States.¹⁵² This has not gone down well with the other Partner States. The launching of a Customs Union was for example objected by political and civil

¹⁵¹ The East African Standard, July 7-13 2008 p.27

¹⁵² Odhiambo W. op.cit p.134

representatives in Tanzania who argued that it would not promote fair economic dealings in the region. The implementation of the CET and the Protocol on the Rules of Origin continue to generate controversy. Partner States continue grappling with Customs Union tariffs as Uganda and Tanzania demand for low duties and duty free importations of vehicles and other goods.¹⁵³ These debates take a lot of resources and time, which could otherwise have been used in negotiations of the next phase: the Common Market.

4.3 Conclusion

Kenya has been driven into EAC by certain imperatives (national interests). Kenya's main interest in EAC is economic growth and development; there is also the need to survive in the contemporary globalization era. EAC is therefore a necessity and not a choice for Kenya. Kenya's national interests do not necessarily converge with the interests of the other Partner States, further there are fears and suspicions from the other Partner States about Kenya's interests and intentions in the EAC. These factors constrain EAC's integration process. Kenya which is the most powerful in the region is not willing to provide leadership in EAC, despite the fact that it hopes and is bound to benefit the most from the regional scheme. In addition Kenya's domestic politics and policies to some extent have contributed to constraining the EAC's integration process.

¹⁵³ The East African Standard, June 16-22, 2008 p.3

CHAPTER FIVE

FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

In this era of globalization, resurgence of regionalism has been a major feature of the contemporary international system. There has been an enthusiasm by African countries to pursue regional integration. This is being done by forming new schemes, strengthening weak ones and reviving defunct ones like in the case of EAC. In East Africa regional integration is one of the options for survival in the contemporary globalization era where small economies may not effectively compete and may easily be swallowed up into the global economy if they go it alone. Regional integration in East Africa is therefore a necessity and not a choice.

The achievements realized in EAC integration process are commendable; all Partner States have benefited from increased trade since the implementation of EACU. Trade within the three original Partner States has increased by 20% rising from \$1.52 billion in 2004 to \$1.9 billion in 2008.¹⁵⁴ They hope to benefit even more from the Common Market which is the next phase of EAC. However national interests and sovereignty remains a big obstacle to the community's success. Kenya just like the other Partner States has been driven to EAC by the functionalist variables; these are economic, social, technical and cultural imperatives of co-operation. However due to the disparate levels of development in the region with Kenya having the largest economy in the region and also due to the capitalistic nature of Kenya's economy, there are concerns, fears and suspicions from the other Partner

¹⁵⁴ The East African Standard, July 21-27, 2008 p.10

states especially Tanzania and Uganda. There are concerns and fears of unequal distribution of benefits and there are suspicions about Kenya dominating the region. These concerns and fears have partly contributed to the slow implementation of protocols and resolutions. However compensatory measures have been put in place to correct the imbalances but these measures also have their shortcomings which should be looked into.

The slow implementation is largely attributed to the lack of strong institutions in EAC capable of enforcing laws and obligations under the EAC treaty. At present EAC does not have adequate powers to ensure that its decisions are effectively implemented and its objectives realized. The institutions of the EAC are not accountable to the people in the region and there are no checks and balances to the workings of these institutions. The institutions are accountable to the Summit and the Summit is not accountable to the people. The Summit has all the powers in EAC although it is not accountable to the people.

For EAC to be a success, the issues raised above must be addressed. The community must have powers to give directives which the legislatures of Partner States would be obliged to implement in a stipulated time frame. Such directives would need to be backed by a regime of sanctions. The EAC institutions including the Summit should be accountable to the people in the region and the powers given to the Summit should be abridged.

Poor infrastructure has greatly constrained the integration system. Kenya's poor infrastructure has been related to Kenyan domestic politics and poor

governance. There is an urgent need for Kenya to upgrade its poor facilities. This can be done by reducing road blocks and Non-Tariff barriers especially on the Northern corridor. The Kenyan government should also consider proper privatization of the Kenya Railway Co-operation, since RVR has not been up to the task. ICT related infrastructure should be improved, Mombasa port facilities should be upgraded and corruption stamped out at all costs.

For the integration process to be successful there is need for leadership by one of the Partner States. Kenya which has the largest economy should provide leadership in EAC not necessarily by dominating the integration process, but by proposing policies, implementing tariff reductions and other liberalization measures.

Good governance creates a good environment for business, which is essential for the success of EAC. Kenya's poor governance has greatly affected her economic performance. Lack of sound economic management has led to poor performance of Kenya's economy and has heavily discouraged businesses and investors. There is therefore need for Kenya to look into issues of mismanagement and corruption and strive to create a good environment for investors. The other Partner States should also work towards the same goal of making the region more competitive.

Investors are also concerned about lack of good policies in Kenya, the size of government and unwieldy public bureaucracies all which are a major impediment to economic activities. The big government in Kenya is taking up a big chunk of the budget which could otherwise have been used in other ways like improving on the

infrastructure which would in turn boost productivity. This would promote the integration process.

Accountability and transparency of the government are crucial in the integration process. Thus Kenya need to draw up a framework of integration in which popular participation of the masses empowers and equips them with skills to make decisions in economic and social spheres. Civil society and the private sector should participate in decision making processes in EAC. Kenya's democracy should therefore create an environment for the evolution of strong civil society organizations that can play their role in EAC.

Kenya should also sensitize and create awareness about EAC to the people and enlighten the people on the benefits of EAC and the central role they should play. The other Partner States should also do the same. In this way the ownership of EAC will remain with the people and not the politicians who were responsible for the collapse of the defunct EAC in 1977. The integration process will be people driven and this could help quicken the implementation of the Common Market and the other remaining phases.

The first phase (EACU) of EAC has been successfully implemented. Talks on the second phase (Common Market) and the third phase (Monetary Union) are ongoing. The biggest challenge remains in the fourth and final phase (Political Federation) which requires Partner States to cede sovereignty to EAC, so that a Political Federation is achieved by 2013. Kenya dearly holds on to her sovereignty and so do the other Partner States. This makes the idea of a Federation appear

unfeasible. However Kenya should provide leadership to the other Partner States and lead the way by gradually ceding sovereignty to EAC. There should also be political will from the leaders. The Summit should diligently work to make the EAC a success.

Finally, Kenya's national interests are unending and Kenya is always in pursuance of her interests. The conflict between individual national interests and community interests in EAC can be solved by a careful strike of balance between national interests and community interests. Persisting diverse national interests should be harmonized with the community's interests.

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INTERVIEW SCHEDULE

Interviewee's name (optional) ----- Institution-----

Position-----

1(a) What are Kenya's national interests in the East African Community?

b) Do the other Partner States (Uganda and Tanzania) have similar national interests?

2. Has Kenya realized any of her national interest within the EAC? Please explain _____

3(a) Has Kenya's national interests interfered with the integration process? Please explain _____

b) Have the other Partner States' national interests interfered with the integration process? Please explain _____

c) Has Kenya's sovereignty interfered with the integration process? Please explain _____

5 a) What gains / losses has Kenya realized since the revival of the EAC? _____

b) How is the Kenyan government dealing with the loss if any? _____

c) Have the other Partner States (Uganda and Tanzania) incurred losses or gains by joining the EAC? Please explain _____

8 a) Is the implementation of the phases of EAC going on according to the given time frame?

b) If not, what are the reasons?

9. How are you (EAC personnel) dealing with the problems that are constraining the implementation of the EAC?

10a) Does Kenya honor all her agreements in the EAC?

b) If not, why?

d) Do the other Partner States (Uganda and Tanzania) honor all their agreements in the EAC? Please explain. _____

11a) Do we have instances when Kenya has chosen or chooses to adopt a unilateral decision outside the EAC?

b) Has this affected the integration process?

12a) How do the differences in levels of economic development among Kenya, Uganda and Tanzania affect the integration process?

13(a) Kenya has the largest economy in the region. Does she in any way dominate in EAC?

b) What is the effect of Kenya's domination or lack of domination in EAC?

c) What are the other Partner State's attitudes towards Kenya?

14a) How will individual citizens from Partner States benefit from the EAC?

b) What are the individual citizens' attitudes towards EAC?

15 a) The long term objective of the East African Community is to federate by 2013.

To what extent is Kenya ready to federate?

b) What are Tanzania's views on the federation?

c) What are Uganda's views on the federation?

THANK YOU FOR YOUR COOPERATION

