



A critical analysis of the proposed East African cooperation taking into consideration the 1994 Arusha agreement

Lilian Kokuhabukirwa Rugeiyamu

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**A Critical Analysis of the Proposed East
African Cooperation Taking into
Consideration the 1994 Arusha
Agreement**

A CRITICAL ANALYSIS OF THE PROPOSED
EAST AFRICAN COOPERATION TAKING INTO
CONSIDERATION THE 1994
ARUSHA AGREEMENT

A Compulsary Research Paper submitted in Partial
Fulfillment for the Award of the Bachelor of Laws Degree
at the University of Dar es Salaam.

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ABSTRACT

This research revolves around the East African Cooperation focusing on various aspects which will be further discussed.

The first chapter is an introduction to regional integration on a global basis, narrowing down to regional integration in Africa and finally East Africa itself. The importance of cooperation is stressed especially in this era of global regionalism and in order to enhance and smoothen out such operations, clear laws are needed.

The second chapter is rather historical, focusing on the East African Community, which was the most renowned, and vibrant cooperation in East Africa before its collapse. Several of its institutions still survive today and the proposed East African Cooperation's aim is to try and enhance their roles.

The East African Community Treaty of 1967 is looked at in depth with the aim of pointing out its weaknesses and where the community went wrong. Furthermore, after the collapse a Mediation Agreement was later concluded in 1984, in order to divide the Community's assets.

The third chapter is based on the recently established East African Cooperation and looks at its aims, accomplishments so far and its relation with other cooperation arrangements such as SADC and COMESA. It has been stated that the current East African Cooperation is 'old wine in a new bottle' and it will be discussed whether the cooperation is worth reviving taking into account matters such as sovereignty, economic imbalances in trade and other related issues. In so doing, the Cooperation's future prospects will be considered.

The fourth chapter will be based on a proposed legal framework. The cooperation to date does not have a Treaty and any attempts to cooperate are based on agreements. This research will propose ideas that should be considered by the three member states when enacting a treaty, taking into account the current situation and past mistakes in order to prevent another collapse.

The fifth chapter concludes the research and states the best type of cooperation that the East African states should center on.

ACKNOWLEDGEMENT

Writing my research paper has not only widened my horizons on regional cooperation, but has also given me an insight on the problems encountered in regional cooperation, especially in East Africa.

Bearing this in mind, it would be impossible for me to continue without thanking those who assisted me with my research. I will mention but a few.

I would like to start off by thanking my supervisor, Dr. S. Mvungi, for his tireless effort, kindness and patience in assisting me finalize my research.

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Last but not least, I thank my family for always being there for me, especially My Aunt, Mrs. Lene Rwezahura and my sister Flora Rusenene for her assistance.


DEDICATION

My work is dedicated with much love and affection to my late father and to my mother, Frederick & Emiliana Njoki Rugeiyamu, who made me whom I am today.

Thank you and God bless.

DECLARATION

I, LILIAN K. RUGEIYAMU, declare that this work is my own to the best of my knowledge and it has not been submitted either in whole or in part for a Degree or any other academic award in any other university.



Lilian Kokuhabukirwa Rugeiyamu

27.5.97
Date



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27.5.97
Date

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ABBREVIATIONS

ASEAN	-	Association of South East Asian Nations
COMESA	-	Common Market for Eastern & Southern Africa
EAC	-	East African Community (Chapters I & II), East African Cooperation (Chapter III)
EC	-	European Community
Id	-	IBIDEN
EU	-	European Union
NAFTA	-	Northern American Free Trade Association
OAU	-	Organization of African Unity
OPcit	-	Opere citate (in the work cited)
SADC	-	Southern African Development Community
WTO (Former GATT)	-	World Trade Organization

LIST OF STATUTES & LEGAL MATERIAL

Treaty for the East African Community	-	1967
Tanzania Income Tax Act	-	1973
Lagos Plan for Action	-	1980
The East African Community Mediation Agreement	-	1984
African Economic Community Treaty	-	1991
Treaty for the Establishment of the Common Market for Eastern & Southern Africa	-	1992
Maastricht Treaty	-	1992
Treaty for Southern Africa Development Community	-	1992
Arusha Agreement	-	1993
Muhutasari kuhusu Ushirikiano kati ya Nchi za Africa Mashariki (Tanzania, Kenya na Uganda)		

LIST OF CASES

<u>East African Community V.R.</u>	(1970) E.A. 457
<u>In the Matter of an Application by Evan Maina</u>	(MiSc.) Case No. 7/1969
<u>Okunda & Another V.R</u>	(1970) E.A. 453

DEFINITION OF BASIC TERMS

- | | | |
|---------------|---|--|
| Community | - | A society or body of people living in the same place, under the same laws and regulations who have common rights, privileges, or interests. |
| Confederation | - | A league or compact for mutual support, particularly of nations, or states. |
| Cooperation | - | Association of persons for their common, often economic benefit. |
| Federation | - | The formation of a single sovereign power by the uniting of separate states, provinces or colonies so that each retains the management of its own local affairs. |
| Globalization | - | Internationalization, pertaining to or involving the whole world. |
| Harmonization | - | To bring into accord. |
| Integration | - | Process by which originally whole and independent units are tailored together into a new unified unit or system which never existed before. |
| Regionalism | - | A consciousness of and loyalty to a distinct subnational or supranational area usually characterized by a common culture, background, or interest. |
| Sovereignty | - | The international independence of a state, combined with the right and power of regulating its internal affairs without foreign dictation. |

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1.0 INTRODUCTION

1.1 Global and Regional Integration

A new world economic and political order is currently emerging to replace the old order. Regionalism and globalization as two distinct and contradictory phenomena in international economic relations are being promoted by some powers as separate trends that could be made to converge at the global level.¹ The former is essentially regional specific with built-in protectionist tendencies and the latter is predicated upon trade liberalization at global level. However, both appear to be major elements in the emerging world economic order, despite their contradictory nature.

Regional integration has been defined by Brownlie as being "a process by which two or more states may come together in a union of a constituent nature establishing thereof a supra national state or authority"²

Regional integration is a counterforce to national protectionism and has become a global trend that has made possible the conclusion of several trade liberalisation agreements in different world regions. In Europe, the EC is after the Maastricht Treaty³ is not only a common market but moving towards political union. In the Northern and Central America; United States, Canada and Mexico, have ratified NAFTA. In Asia the ASEAN preferential trade area is slowly emerging as a regional trade block of global significance. In Southern

¹ Africa's Potential Industrial Comparative Advantages In An Emerging New World Economic Order (UNECA) Dec. 1995 p.1.

² Brownlie, I. Principles of International Law (1990) p 692.

³ Feb 7th, 1992 (signed)

America, liberalisation of inter-state trade has led to an agreement eliminating tariff barriers between Bolivia, Columbia, Peru and Venezuela.

Most regional integration arrangements are largely economic supra state systems which may have the achievement of total union, as the main or final objective. Total union implies an achievement of total harmony and unification of economies, currencies, social and political institutions of the co-operating states and for this to occur, a set of legal rules must be framed.

At the world-wide level, the former GATT⁴ is the only international agreement that lays down a framework of multilateral rules for a world-wide liberalisation of trade barriers, for the harmonisation of trade policies and for a setting up of a forum of continuing discussions on trade policy matters, negotiations on the reduction of trade barriers and the settlement of international trade disputes.

From Raghavana's⁵ viewpoint, regionalism is turning into the recolonization of the third world through the Uruguay Round,⁶ as it seems to confirm the periphery or centre proposition according to which the industrialized market economy countries of the North will establish specific centres in the south to ensure effective control as was the case during the colonial period.⁷ Imperialistic forces must be avoided by promoting protectionist policies in regional integration. Developing nations should concentrate on creating their own market

⁴ Now known as the WTO after the Marrakesh Agreement of 1993 by the Uruguay Round

⁵ Chakravarthi; Raghavana (1990) Recolonization, GATT, The Uruguay Round And the Third World, Third World Networks, Malaysia.

⁶ The Round launched in Uruguay in Sept. 1986, is the biggest round of trade negotiations ever undertaken. It is comprised of the 'Great Seven' economic superpowers inc. U.S., Japan, who impose and decide on how trade will be conducted globally through the WTO. The Round stimulates sustainable growth in developed and developing economies alike and its success affects the world economy.

⁷ Op. cit. (UNECA) Dec. 1995 p.11.

before catering for others. However this does not mean stopping cooperation with the developed world altogether. We must look into what measures to take in order to stop the third world being bull-dozed with the main focus being on how to achieve self-reliance.

1.2 Regional Integration in Africa

Regional integration is not a new concept to Africa. Economic integration became topical way back in the 1950s when many African countries were moving towards independence, although in the early 1970s all independent African countries, regardless of their economic policies started experiencing severe economic difficulties,⁸ including rising oil prices, poor terms of trade and a balance of payments problems. Solutions were sought at both international and regional levels. It was realized however, that the increasing internationalization and globalization of economies creates the necessary impetus for regional integration especially of African countries which stand to be economically marginalized if they continue to act individually.⁹ Nkrumah, who was against African states acting individually, stated that, 'Africa's interest must be the prime concern of Africa's leaders. The safety and progress of every one of our states can be safeguarded only by the acceptance of this precept, which can best be promoted by our unalloyed unity'.¹⁰ Without unity in Africa, she will never be politically and economically free, but always at the mercy of outside powers.¹¹ Hence in 1979, the OAU's endeavours led to the formulation of the Monrovia Strategy for the

⁸ Migiro, A.R. Regional Integration 'An International Perspective & Lessons for East African Integration. p. 2

⁹ Ibid p. 3

¹⁰ Kwame Nkrumah, Africa Must Unite, Heinemann, London, 1963 p. 185.

¹¹ Uganda's former Attorney - General - Godfrey Binaisa.

Economic Development of Africa,¹² followed by the 1980 Lagos Plan of Action. By 1980, several sub-regional groups were already in place such as the West African Customs Union, (UDEAO), from 1966, The West African Economic Community (CEAO), in 1974, the Economic Community of West African States (ECOWAS); 1975, SADCC in 1980¹³, PTA (now COMESA) in 1983 and the Economic Community of Central African States (ECCAS) also in 1983.

Failure of many of the subregional organizations created, indicates that the formation of an African Economic Community is farther from becoming a reality, however, it is essential with the global move towards regionalism. Donor funding is bound to become less and this is already envisaged in Africa's relations with Europe who also has her own interests at heart.

The countries of the European Union have traditionally been Africa's trading partners, however with changes occurring in global trade, Africa is bound to be somewhat affected by the new world economy order. The conclusion of the Uruguay Round of Multilateral Trade Negotiations which officially established the World Trade Organization in 1996, focuses on the sustenance of economic growth based on expanding world markets. There is stiff competition and with the increase of synthesized goods not as many of Africa's raw materials are as essential. With the emerging trend being in favour of regionalism, there is a move to concentrate more on trade within the European continent. The opening up of Eastern Europe after the collapse of the Soviet Union is of deep concern to the European Union and more aid will be geared in her development as she lies within the region, hence reducing the amount of assistance given to Africa.

¹² OAU Res. CM/Res. XXXIII Rev. I.

¹³ Now SADC (Southern African Development Community)

Also, the entry of China into the World Market and the rise of the new industrialized countries as new centres of economic and political power, i.e. Singapore and Taiwan are further proof that the level of economic development in Africa is too low to allow the continent to benefit fully from the emerging new world economic order.

However, this matter should be of serious concern to African leaders who should start working on alternative measures to help improve their economies. Africa needs to adopt some guidelines by which the continent can build its industrial capacity based on the region's potentials for comparative advantages and competitiveness.

1.3 East African Integration

In East Africa, current efforts to revive the new East African Cooperation should speed way for new thinking in regional integration, especially with increasingly stiff competition and the world dividing itself into trading blocks. Studies of the former defunct community show that there were constraints in the 1967 East African Community treaty, the latter which was the axis of the community's entire being. However, the problem was not that the laws were not there, but that they were not clear and lay at the mercy of national governments. Hence, it can be assumed that the lack of a coherent regional constitutional structure was one of the major reasons for the failure of the East African Community. If corrective measures are not taken, the same may be the ultimate cause for the failure of the newly formulated East African Cooperation. Furthermore, cooperation is the essence of progressive development, without it, there is no hope of success.

To prevent the cooperation from becoming a 'white elephant', the three states should work out whether regional cooperation in East Africa is feasible and to what extent. Are we ready for another scheme of cooperation and if so of what kind. We should also look into the question whether politics can be avoided this time round, or whether the whole idea of co-operation is political.

I shall focus mainly on the East African Cooperation but also observe the former community for reference purposes. My objectives shall be to briefly discuss the legal pitfalls of the former community and provide suggestions for the prevention of the new cooperation from making the same mistakes, through viable and practical measures. I shall also show the importance of a legal and or constitutional framework and the role it plays in making any cooperation scheme a success.

In order to be able to propose the best type of cooperation to be considered, I shall take a bird's eye view of various trading blocks that the East African Cooperation can learn from, the competitiveness in global markets, the consequences of revival and what the East African Cooperation can do to cut into the market once again.

2.0 THE EAST AFRICAN COMMUNITY

2.1 A Historical Background

Cooperation in East Africa developed over a number of years. The Organization of Inter-Territorial Services in Kenya and Uganda began in 1902 with the construction of a railway. Three years later, the East African Currency Board was set up to issue bank notes for the two territories and in 1911, a postal union was established.¹⁴

Tanganyika joined Kenya and Uganda in the formation of a free trade area in 1923 and in 1927, the three territories became a customs union with a common external tariff adopted earlier in 1922. From 1926 to 1950 various services common to the three countries evolved under joint control and were to form the nucleus of the East African High Commission, later renamed the East African Common Services Organisation. Until 1965, a common currency, the East African shilling, was the legal tender in the three countries as well as in Aden and Zanzibar. These were the first attempts to create economic integration although admittedly under colonial sponsorship.¹⁵ Between the 1950s and the 1960s, during the nationalist struggles for political independence, calls for an East African Federation were voiced in East Africa. Julius Nyerere of Tanganyika proposed to delay the date of Tanganyika's independence so that all the East African territories could achieve independence on the same day to make it possible to have an immediate or automatic federation.¹⁶

¹⁴ Delupis, I.D. The East African Community Common Market, p. 19.

¹⁵ Nyirabu, M East African Co-operation: A Path Strewn With Obstacles, p.3

¹⁶ Nyerere, J.K., East African Federation, p.96.

In 1963¹⁷, the three newly independent East African states agreed to establish an East African Federation "by the end of the year".¹⁸ The Working Party met in Kampala in May 1964 and the Kampala Agreement was drawn with the aim of correcting some of the imbalances prevailing in the market principally to decrease trade deficits and industrial imbalance between Tanganyika and Uganda, on the one hand, and Kenya, on the other. The arrangements initiated had some restrictive and cost raising effects, such as cigarette manufacturers had to incur considerable expenses in shifting the weight of their production frankly to Tanganyika. The three states found that political union was no longer feasible. There was lack of political will to cooperate fully. Uganda was not prepared to surrender her sovereignty, especially in matters like citizenship and foreign affairs. Kenya and Tanganyika agreed that foreign affairs and citizenship must be a federal responsibility.¹⁹ Kenya was critical. The Nationalist of Dar es Salaam in 1964 observed that:

"Tanzania cannot force Kenya to ratify the Kampala Agreement if she does not wish to do so... Tanganyika's Government has been acting as if it is bound by an Agreement which does not exist in any legal form.. how much longer can Tanganyika afford to adhere to an agreement which Kenya does not honour?"

Kenya was reluctant as she was afraid of being marginalized and set back in her path of development. Furthermore, it was the investors that made the government act accordingly, as they were aware that complying with the Treaty, would be to their disadvantage.

The second attempt to consolidate East African co-operation was a result of Uganda

¹⁷ Nairobi Declaration, June 5th 1963.

¹⁸ Statement by Mr. Nekson (Uganda) "Meetings & Discussion on the Proposed East African Federation", Information Services of Tanganyika & Zanzibar, 1964.

¹⁹ Statement by Mr. Kambona, Mvungi PHD Thesis.

and Tanganyika's complaints concerning losses accrued by virtue of their membership in the common market. In 1961, as a result of the Report of the East African Economic and Fiscal Commission, a scheme had been suggested to redistribute tax revenue as a means to make good for the loss of revenue for the competing partners. The immediate adverse effect on economic co-operation in East Africa arose from restriction on trade rather than the creation of separate currencies. Tanganyika imposed restrictions on a wide range of Kenyan imports further than had been envisaged in the agreement. Furthermore, after 1964, Kenya insisted that a single currency be maintained in East Africa. This condition was unacceptable to the other partners. In June 1966, Tanzania²⁰ created her own central bank and plans to introduce her own currency became public. The trend was followed by the other two states and this was the beginning of the end²¹ of the East African Common Market.

2.2 The Philip Commission (1966)

Instability in the three states was based on the growing inequality over the years with Kenya being the metropole, while Uganda and Tanzania were the markets and hence susceptible to exploitation. The expansion of Nairobi had a 'backwash effect'²² On Dar es Salaam and Kampala.

It was recommended that a Commission chaired by Prof. Kjeld Philip, a Dane,

²⁰ Named Tanzania as a result of the 1965 Tanganyika/Zanzibar Union
²¹ Headline in The Sunday Times, London, 1965
²² Myrdal, G. Economic Theory & Under-developed Regions chpt. 3

including nine Ministers from the three states, be set up to study how a functional Common Market could be created and maintained in East Africa now that the three countries were independent.

The Commission started work in January 1966 and made a proposal for regional balance. Some of the major recommendations included: the decentralisation of the Headquarters of some of the Common Services from Nairobi to the other capitals of the member states in order to promote balanced industrialisation in East Africa and deal with the question of the distribution of benefits), the institution of the Transfer Tax, the creation of Resident Ministers at the headquarters of the community, the harmonization of fiscal and monetary incentives with a view of encouraging balanced industrial development and attracting foreign investment, and many other recommendations.²³

Out of the Philip Report was born the Treaty for East African Cooperation²⁴, the outcome of much bargaining and compromising between the three partner states. While it was being negotiated, each attempted to protect her own particular interests and alleviate what she considered to be legitimate grievances.

The Treaty's aim was to enhance economic integration by boosting up the two weaker economies and creating a state of economic harmonization in favour of all three states. It anchored on three broad categories: a common economic policy, common institutions and a common market.

²³ Tulya-Muhika Lessons from the Rise and Fall of the EAC p. 19

²⁴ Henceforth referred to as 'the Treaty'

2.3 The East African Cooperation Treaty (1967)

The East African Treaty effective from December 1st 1967, was signed in Kampala, confirming and codifying existing arrangements. One of the reasons for confidence in the viability of reordering of economic co-operation in East Africa in 1967, was that for the first time, there was a legally binding and comprehensive treaty on the arrangements for co-operation, and it was an encouraging demonstration of the willingness of the three states to work together and of their fear of the consequences of splitting apart, although it did not resolve all their problems. Furthermore, it was statistically proved in a survey that 92% of East Africans in 1966 wanted integration, showing that it was an achievement worth striving for.

2.3.1 Aims of the Treaty

The major aims of the East African Community were economic co-operation and development and the Treaty proclaimed the aim of the community to be:

‘to strengthen and regulate the industrial, commercial and other relations of the Partner states to the end that there shall be accelerated, harmonious and balanced development and sustained expansion of economic activities the benefits whereof shall be equitably shared.’²⁵

In order to achieve this objective, the Member states undertook to ensure that there were: common tariffs and excise duties, abolition of quantitative restrictions to trade between

²⁵ EA Treaty 1967 Art 2 (1)

the Partner States the establishment of a common agricultural policy, the creation of on East African Development Bank, the retention of a current account of payments between Partner States, the harmonization of monetary policies and consultations necessary for the maintenance of the common market, the continuation of common services, the proximation of commercial laws and the co-ordination of economic planning and transport policies.²⁶ The Treaty took into account the financial aspects of the distribution of the benefits and its socio-economic relation to regional, activities, such as employment creation and spill-over effects.²⁷

2.3.2 Functions of the Treaty

The Treaty established the following organs or institutions: The East African Authority, The East African Ministers, The East African Community Councils and the Common Market Tribunal.²⁸ The East African Authority was the highest decision-making, supervising and controlling organ of the community, consisting of the Heads of State of the three partner states.²⁹ The Authority was immediately assisted by the East African Ministers, who were appointees of the Heads of State. The appointees had to be qualified voters in the electoral laws of their country and not a member of the nation's cabinet, hence they were to be independent from national politics.³⁰

The East African Ministers were the actual political functionaries of the community and were responsible for its running and daily affairs. They were members of every

²⁶ Ibid. Art. 2 (2).

²⁷ Migiro *Op cit*, p. 13.

²⁸ *Op cit*. Art. 3.

²⁹ Ibid. Arts. 46,47 & 48

³⁰ Ibid. Art. 49

council established by the Treaty.³¹

They were directly accountable to the Authority who also determined their tenure of service.³² A councils system was introduced and councils were established. These were the Common Market Council, the Communications Council, the Economic Consultative and Planning Council, the Fincance Council and the Research and Social Council.³³

The EAC Treaty established the East African Legislative Assembly³⁴ in the same way and with similar powers as had been in the EASCO Agreement.³⁵ Other than the changes in the composition of the assembly the actual method of recruitment of members of the Assembly remained appointive, rather than elective.³⁶ This left the community in the same situation of isolation and alienation from the mainstream of communal or grassroots politics as was with its predecessor the EASCO.

The East African Legislative Assembly (EALA) was vested with the powers of enacting laws of the community in the areas of Community jurisdiction. The Acts of the EALA were effected by means of Bills passed and assented by each member of the Authority.³⁷ Any Act so passed and assented became directly enforceable law in the domestic jurisdiction of the Partner States, but the members of the Authority jointly or severally had powers to withhold assent³⁸, and if this persisted for more than a month, such an Act lapsed.³⁹

³¹ Ibid Arts. 51 & 54

³² Ibid Art. 50

³³ Ibid. Art 53

³⁴ Ibid. Art 56

³⁵ East African Common Services Organisation

³⁶ Op cit. Art. 57

³⁷ Ibid Art 60 (1)

³⁸ Ibid Articles 59 and 60

³⁹ Ibid. Art 60 (2)

The EAC Treaty provided for an elaborate staffing system of the institutions of the Community. The Secretary General was the chief executive officer in the services of the Community and was assisted by a counsel to the Community and an Auditor General.⁴⁰ The Treaty provided for an East African Community Service Commission whose members were appointed by the Authority from time to time in such numbers as the Authority deemed fit. The Commission had the responsibility of making appointments, transfers, promotions, and disciplining of the staff of the community and its institutions with the exception of the members of the Common Market Tribunal and the Court of Appeal of East Africa.⁴¹

The Treaty establishing the EAC provided also for a two tier dispute settlement mechanism, namely, the Court System⁴² and the Tribunal system⁴³. The Court system consisted of an apex court, namely, the Court of Appeal for East Africa as had been established in the EASCO Agreement⁴⁴ and its jurisdiction was to hear appeal cases from the High Courts of the three Partner States as provided for by the laws of each partner state⁴⁵.

The Tribunal system included the East African Industrial Court to deal with pensions and trade disputes. The Treaty decentralised the location of the institutions of the Community so that there was a balance of interests multiplying the effect of community affairs i.e Community Headquarters in Tanzania, East African Railways and

⁴⁰ Ibid. Art. 61

⁴¹ Ibid. Arts. 62, 63 & 64

⁴² ibid Arts 80 & 81

⁴³ ibid Arts 84 & 85

⁴⁴ Ibid. art. 80

⁴⁵ ibid Art. 81

Airways in Kenya and East African Development Bank and an East African Posts and Telecommunications located in Uganda.

2.3.3. EAC Successes

It has been observed that the first three years of the community were so successful that the neighbouring states began taking an interest and sought Community membership i.e. Zambia, Ethiopia and Somalia.⁴⁶ One of the important steps that the Treaty took was to restructure the organization by relocating Community institutions and decentralising its functions. The Headquarters of the Community was based in Tanzania, the East African Railways and Airline were centered in Kenya and the East African Development Bank and Posts and Telecommunications, in Uganda.

The EAC encouraged cooperation in East Africa by strengthening the will of the three member states to work together and strengthening bonds between their citizens. For Tanzania and Uganda, closer cooperation with Kenya helped them realize that they still had much to achieve in terms of development. The EAC encouraged sound legal establishments, for instance the East African Court of Appeal, which was not only beneficial to the jury and to lawyers, but to the whole judicial entity of East Africa, enhancing the learning process. Furthermore, several institutions were established by the Community which are still in use to date, such as the Soroti flying school in Uganda and links between the East African Universities. Exposure has been very beneficial to those

⁴⁶ Delupis, I. *Op cit* pp. 125-128

involved in the programmes and has assisted in the broadening of their horizons. The apparent success of the EAC however, was short lived. Soon national considerations and sometimes selfish personal interests camouflaged as issues of national interest or sovereignty and actual political instability in the member states began haunting the Community.

2.3.4 Treaty Constraints

Although the establishment of an East African Community was ideal, implementation became difficult leading to the eventual collapse of the community for various reasons. Although the Treaty had 'forward- looking' aims and provided for integration beyond what had existed previously, the member states did not start off on an equal footing. Kenya was an economic giant at the time and the only capitalist state, while Uganda and Tanzania had less capital, hence relying on Kenya which used their markets to her benefit.

There were some constraints in the treaty itself, which was the very core of the establishment, especially the later emergence of ideological differences between the partner states. At the drawing of the Treaty, Kenya was capitalist, Tanzania, with the Arusha Declaration⁴⁷ stating her approach to political and economic development, focused on socialism and self-reliance, while Uganda following "The Common Man's Charter" focused on a humanistic approach to life. Uganda and Tanzania later felt that they were

⁴⁷ February 1967

being exploited by Kenya who had the most to benefit from the community.

One of the reasons for confidence in the viability of rendering of economic cooperation in East Africa in 1967 was that for the first time there was a legally binding and comprehensive treaty on arrangements for cooperation.⁴⁸ However, this is not to say that the Treaty was totally appropriate, therefore it should be searched to see if the seeds of conflict lay there.

The Treaty did not always specify clearly as to which of the institutions of the community was to be responsible for the progress towards those targets, but a considerable number of studies were undertaken in i.e. road transport coordination. It was left to the community to decide on the appropriate institutions to perform the functions given to it and discharge the responsibilities imposed upon it. For instance, the community was to provide machinery to facilitate the co-ordination of the activities of the partner states and to regulate the distribution of its non-physical investments. It must be mentioned that at the time the treaty was negotiated, none of the countries faced the problem of foreign exchange, therefore the market mechanism on which it was based, assumed continuing financial liquidity.

In dealing with the unequal distribution of the benefits of the common market, the Treaty, in one sense, laid the seeds of further disintegration. There was an imbalance in the economics stimulated at the expense of Uganda and Tanganyika demonstrated by the volumes of trade passing between the three territories. Its policy of decentralisation of services and institutions, especially of the communication corporations, had various

⁴⁸ Ghai, Y. Reflection on Law & Economic Integration in East Africa, p. 7

consequences. It increased national self-sufficiency and so made it less alarming to contemplate a break-up of the system, it increased national influence over and to some extent control over the corporations⁴⁹ and detracted perhaps from the economies of scale, a justification for integration, thus weakening the case for common services. The Treaty did not provide for a regional policy of industrialisation nor was it specific i.e. in directing tasks to various institutions and holding them responsible. It concentrated on ensuring free trade among the states, the benefits from which alone were unlikely to be sufficient to hold the system together. While one of the major expectations from the Treaty was an increase in investments largely from private sources, the Treaty made no firm provisions for the creation of an environment conducive to private investment, hence there was a lack of coordination of incentives. Furthermore, there was no formula for the sharing of benefits accrued by the three states. Member states whose economies were being used as common markets were not compensated, instead there was the establishment of a General Fund into which all moneys received by the community from whatever source was to be paid into and funding distributed equally.

The 1974 Railway crisis was resolved by a decentralisation of the Railways corporation. Although rules had been drawn up to regulate the activities of state trading corporations, so that they did not conflict with the principle of non-discrimination and free competition, no attempt was made to enforce them; despite a detailed report on the harmonization of fiscal incentives no agreement was reached as required; despite the statement that the East African industrial system was to be continued beyond 1973, it was

⁴⁹ See Annex X14, Art. 86 1967 Treaty

allowed to lapse, difficulties about road transport licensing rules led to the closing of borders. The Community acquiesced in the break - up of the common income tax administration system, even though its own financial resources were tied to that system and had not yet come up with a long term alternative system of financing.

Another instance in which the Treaty seemed to miss the tide was in its assumption of the common market which essentially established a laissez - faire market integration. Such a system assumed that much of the economic activity was undertaken by private parties; that there was limited governmental control or influence over economic activities, the market being the main regulator of economic relations and activities; that there was enough financial liquidity to pay for the transfer of goods that enter inter-state trade. Many of these assumptions were proved to be unjustified by the time the Treaty was negotiated. Once the Philip Report on which the treaty was based, was submitted, there had been a reluctance to review its recommendations or consider new ones. It is also probable that the implications of the Arusha Declaration for the re-organisation of the economy in Tanzania were not grasped at the time. Nyerere argued that Tanzania's commitment to socialism and the nationalisation of financial and industrial organisations would not affect East African co-operation, since it was co-operation among governments and not among capitalists.⁵⁰ The fact is that the Treaty did assume to a large extent that integration would come about through co-operation as well as competition among capitalists. The Treaty provided a framework within which trade and investment decisions were made largely by capitalists. However, Nyerere's statements were incorrect even as

⁵⁰ Rotchild (ed) Politics of Integration 1968, pp. 163-164

far as the common services were concerned, because they involved, for example, the free movement of persons and goods, which was not the way things were happening.

It became obvious that increasing areas of economic activities would come under direct government aegis. While no drastic steps were taken in Kenya, the government, nevertheless, had armed itself with legislation that in mid 1967 enabled it to interfere in the market, especially in the trading and commercial areas. It was therefore clear that free inter-state trade, which was reinforced by article 16 providing for the rules of competition, was unlikely to obtain for long and yet, it was a key element in the strategy of economic integration.

There was a contradiction in the Treaty. On the one hand by the importance attached to the market mechanism and by the refusal or failure to agree on an industrial policy, the Treaty left much of the initiative to private actors.⁵¹

The market mechanism on which the Treaty was based also assumed continuing financial liquidity. At the time the Treaty was negotiated, none of the countries faced problems of foreign exchange. As soon as these emerged, member states proceeded to protect their foreign exchange position by restricting imports. In East Africa, the only measures that could be taken were quantitative restrictions on goods and these were to be applied to goods from third states and only if these measures were not helpful could inter-state restrictions be imposed. The Common Market Council was to be consulted first and as long as the restrictions were in force, it was to keep the operation of the restrictions under review.⁵² Provisions for mutual assistance were contained in Article 28, and took

⁵¹ Ghai, Y. op cit p. 17

⁵² Op cit Art. 12 (4)

the form of credits. The provisions however, were intended to deal with temporary difficulties. If they persisted over a long period, they would undermine economic cooperation.

Furthermore, economic integration treaties generally require some surrender of sovereignty if they are to be successful, this did not occur in East Africa. According to Article 51 of the Treaty, it was intended and expected that the East African Ministers would perform many of the functions of the Authority. This did not turn out to be the case. Since the Authority itself was essentially a meeting of the three national Presidents, there was ambiguity in the ministers' position. The Councils became the preliminary forum for inter-state negotiations and compromise. When a compromise was reached, the matter was resolved and if there was no compromise the matter was automatically referred to the Authority. Presidents relied more heavily on their national ministers than their nominee at Arusha.

The Secretariat had little real power and could not initiate the process of the enforcement of the Community obligations as against the partner states, nor draw attention of relevant bodies to the suspected infractions of Treaty obligations, although these powers could be based on Article 31. Also, the Treaty imposed a system whereby the Secretary - General looked to employment in the service of his own national government on the termination of his three year period of appointment and was therefore unable to resist national pressures, hence impairing his impartiality and authority. The weakness of the Secretariat and failure of the East African Ministers to emerge as a collective, dispute - solving, policy-making and decision - taking body could be ascribed to

the general reluctance of the partner states to surrender any real measure of sovereignty to the community. This was obvious in the system of voting, the vesting of final responsibility were the three presidents, the careful balancing of national quotas for senior positions to the point of rigidity, the system of the enforcement of the Treaty obligations and the position of the East African Legislative Assembly (EALA). There was no attempt to make the EAC a grassroot -based organization, for instance, through the election of representatives to the EALA, by direct elections in the territories. Partner states appointed nine members in accordance with such procedure as each partner state decided. Furthermore, there was no attempt to make the community system directly enforceable in the domestic jurisdictions of the member states.

An examination of the Treaty showed that the political aspects of co-operation had been down-graded and that the Treaty was largely concerned with economic matters. The community was dominated by the executives of the partner states. There was an unwillingness on the part of the partner states to take any risks implicit in a process of integration, to have as tight a control over the affairs of the Community as possible. The emergence of state industrial and commercial corporations led to certain attitudes of protectionism among the national bureaucrats, while there was not a significant integration of industry in East Africa that would have provided countervailing pressures.

2.3.5 Status of the Treaty and the Enforcement of Treaty Obligations

Since the basic principles of law in each state derived from the common law, the Treaty did not automatically become part of its law. Incorporations of the provisions of the Treaty by national legislation was required to give effect to them. Although the acts of incorporation provided that the laws of the community prevail over those of the member state, the Treaty clearly had a secondary status within national legal systems and it was these which were responsible for the implementation and enforcement of obligations arising from the Treaty, with the exception of certain common market provisions. This showed that the 1967 Treaty was not taken as seriously by the member states as it should have been. The Treaty became important when it benefitted national interest. Member states wanted to retain their sovereignty and act as they desired, showing that they were not fully committed to the idea of East Africa acting jointly and hence showing that they were not ready for a community. Although the Treaty established the lay-out of an East African Common Market, implementing the principles was difficult, especially in a community where the member states had their individual interests at heart, which were inimical to the interests of community as a whole. The problem was considered in two Kenyan cases.⁵³ The first case showed a clear clash between S. 174 and the Kenyan Constitution and the court held that it could not uphold the Community law. In the second case,⁵⁴ it was decided that a prosecution could be instituted without the consent of

⁵³ In the Matter of an Application by Evan Maina...
(Misc.) Case No. 7/1969.

⁵⁴ Okunda & Another V.R. (1970) E.A. 453, Affirmed in the Ct. of Appeal, East African Community V.R (R (1970) E.A. 457

the Counsel to the Community.

These cases show that the enforcement of the community law depended on the national laws and enforcement mechanism. There were several advantages in using national legal systems; they were cheaper, possibly quicker and more widely accessible. However, it was only if the supremacy of the Treaty and the Community law was recognized in the national legal systems that this would have been an advantage. Furthermore, although the Treaty focused on bringing to a halt the process of disintegration in East Africa, it was blinded in the sense that it did not look out for future potential developments with neighbouring countries. Therefore, while the Treaty should have accommodated the problems and anxieties of the partner states to provide a realistic basis for co-operation, in the end it was the attitude of the partner states to the commitments they made and the institutions they established, that determined the future of the Treaty and its legal regime.

2.4 The Collapse of the EAC.

There was a marked reluctance to use the institutions and procedures established by the Treaty to solve conflicts. Different ideologies began to crystallise and their practical and policy implications became obvious and operational. Differences i.e. in wages, tax policies and on attitudes towards foreign investments, posed serious problems. The lack of co-ordination of incentives undermined one of the main rationales of the Treaty. The three states did not realize that the agreed upon procedures and rules for

settling disputes were more likely to strengthen the system of co-operation rather than damage it by the rendering of particular decisions unpalatable to one or more members.

One of the events that seriously laid a ground for the collapse of the Community was the overthrow of the Ugandan civilian government by Amin in January 1971. It highlighted institutional difficulties and the crucial role that the Authority had come to play. Nyerere's strong adverse reaction to the coup overthrowing his friend Milton Obote and his refusal to meet Amin, meant that the Authority did not meet for five years. In the meantime, it is said that Tanzania and Uganda begun withholding cash remittances to the headquarters of the East African Railways⁵⁵ in Kenya, as they felt she was exploiting them and furthermore, Kenya was not being cooperative either by wanting to benefit the most. For several reasons the relationships between Tanzania and Kenya deteriorated, just as those between Kenya and Uganda (especially when Amin started claiming western Kenya).

Decisions taken by corporations, like that of withholding funds from being transferred to head offices created serious problems and could have eventually led to the collapse of the Community. The last blow was when East African Airways, in February 1977, suspended less profitable routes serving Tanzania and Uganda and the Kenyan Government ordered the grounding of the East African Airways, establishing in its place a national airline. Other partner states reacted in panic, closing borders and freezing Community assets. The EAC ceased to exist in July 1977.

After the collapse of the EAC, four institutions survived and continued to operate as joint-ventures of all or two of the three partner states. These were the East African

⁵⁵

Potholm/Fredland (eds) Integration & Disintegration in E.A., P. 25

Management Institute (EAMI), became ESAMI in 1980, second was the East African Development Bank (EADB), as it had equity holders and financial lenders which were beneficial to all partner states. Third was, the East Africa Inter-University Council, as most of them had all the facilities and expertise in all disciplines which the other two had desired to keep including education as an international perspective. Fourth, was the Inter-Governmental Standing Committee on shipping which continued to operate until 1981 when it was liquidated after being declared bankrupt.

2.4.1 Mediation Agreement (1984)

Once the riotous share-out of EAC assets (in 1977) had died down, the three governments appointed Mr. Victor Umbricht, in 1978 to arbitrate on Assets and Liabilities of the EAC. He was charged with three major tasks; to make recommendations for the permanent and equitable division of the assets and liabilities of the 'Community institutions', to review and make proposals for the future of the EADB and the Future of East African Cooperation.⁵⁶

In 1981, Umbricht finalized the Report and it was accepted, the political freeze between Kenya and Tanzania, in force from 1976/77, did not facilitate the signing of a Mediation Agreement until 1984.

The Agreement incorporated all the major Umbricht recommendations, especially

⁵⁶ Lwambano The Political Economy of Negotiating The EAC Mediation Agreement 1984, MBA Thesis, p. 104.

the share-out formula: Kenya (42%), Tanzania (32%), Uganda (26%), based on depreciation, 53 methods of compensation to Uganda for the deficit in the shareout,⁵⁷ the allocation of long-term disabilities⁵⁸ in the form of debts to the World Bank and other provisions i.e. claims settlements of disputes,⁵⁹ and the exploration of other forms of East African cooperation for the future, including the continuation of some East African institutions, i.e. the EADB.

On pensions, the Agreement affirmed the ex- EAC employees right to be managed by each state for its nationals. However, while Kenya fully compensated all its nationals and Tanzania most, Uganda had not compensated any ex-EAC employee in full.

It is clear that the mechanism put in place for this purpose had no built-in insurance and it may be, with hind- sight, the Board of Trustees, set up under the same Agreement to administer Pension and Provident Funds⁶⁰ that were administered by the Crown Agents at the time of the break up, should have been modified to administer the entire pension and provident funds as an independent authority.

However, Mediation between the three states enhanced cooperation to the extent that even Tanzania and Kenya re-opened their borders. The aftermath of Amin changed Tanzania and Kenya's attitude towards Uganda and cleared tension even with the collapse of the EAC. Political shifts in Kenya also helped improve Kenya -Tanzanian relations. Nyerere still had dreams of regional cooperation. In 1981, Tanzania became the founder of the PTA, however, Nyerere did not sign the treaty immediately, instead choosing to

⁵⁷ Mediation Agreement 1984, Art.3

⁵⁸ Ibid Art.4

⁵⁹ Ibid Art.9

⁶⁰ Op cit. Art. 10

deal with the East African problem first, only becoming a signatory later due to regional pressure.

Some of the creditors decided to cancel EAC debts to facilitate the renewal of the cooperation in the region. Article 14 proposed to explore and identify further areas for future cooperation and work out concrete arrangements. The three heads agreed on a number of issues, such as Soroti flying school, the Inter-University Council and ESAMI to remain in operation.

2.5 Conclusion

Reverting to the commencement of the Community which was based on the 1967 Treaty, it can be stated that although the legal draftsmen did not clarify the Treaty, in that they did not assign tasks to various bodies, hence preventing confusion, they cannot be blamed for the Treaty's defects. The Treaty was a 'package deal' that gave to the different partner states different things. It was statistically proved in survey in 1966 that 92% of East Africans in the three states wanted integration, the problem lay with the governments themselves. The EAC's greatest weakness was that the people did not have a voice. Everything was based on the governments of the partner states, who did not always observe their treaty obligations and used a "top-down approach". The EAC failed to produce an East African. People remained Ugandan, Tanzanian and Kenyan and top jobs were allocated by nationality. The member states had radically different political ideologies i.e. socialist, capitalist and in-between. There were pre-existing trade imbalances and

problems arose over sharing revenue. Furthermore, there was a lack of political will and a dominance of one state over the other two.⁶¹ The states reluctance to use the institutions and procedures established by the Treaty led to even more conflicts and in the long-run the Community's collapse.

Even with the break up of the Community, it was realized that complete lack of cooperation between the three states would not be beneficial to either of them. The EAC was a good experiment and brought much gain to the economies of the three states. Since the collapse of the Community in 1977 and the Mediation Agreement in 1984, there have been talks of rejuvenating cooperation. Bearing this in mind, it is important to discuss what type of cooperation would be suitable for the East African states and in order to make it feasible, the legal measures to be taken this time round.

⁶¹ Report of the Dissemination Workshop on Regional Integration & Trade Liberalization in sub-Saharan Africa (UNECA), Oct. 1996, Addis, Ababa, P. 52.

3.0 EAST AFRICAN CO-OPERATION

During the early 1960s, even before the three East African States attained independence, they talked about the desirability of an East African Federation. TANU was prepared to delay the independence of Tanganyika if all three states could emerge as one independent federal nation. The dream still lives on and efforts are being made towards its achievement.

3.1 Talks for a new Co-operation

During the meeting of the Commonwealth Heads of Government held in Harare in October 1991, Presidents Moi, Museveni and Mwinyi agreed to revive co-operation between their nations, especially economic⁶⁵. During their talks they agreed on the importance of co-operation: political, economic, social and security and they were prepared to set aside their previous differences.

The three presidents again met in Nairobi in November 1991 to continue the Harare talks and to arrange meetings for their following discussions. The Heads of State agreed to establish a follow-up mechanism for Regional Co-operation.

In January 1992, the three Ministers of Foreign Affairs met in Nairobi and agreed on the following:

⁶⁵ 'Muhtasari Kuhusu Ushirikiano Kati ya Nchi za Afrika Mashariki (Tanzania, Kenya na Uganda).'

- a) Each member state was to establish a national committee to study, analyse and identify areas of co-operation in the light of the past experience in co-operation within the region.
- b) The National Committees were to complete their work in time for the Tripartite Committee Meeting of Experts to be held in February 1992 in Kenya.
- c) The Tripartite Committee of Experts also draws up a common text containing the identified areas of co-operation to be presented to the three foreign ministers for their consideration.
- d) An agreement for the establishment of a Permanent Tripartite Commission for Co-operation was to be drafted by the Tripartite Committee of Experts.

The Ministers recalled that under Article 14 of the Mediation Agreement, some institutions had been identified by the three Heads of State to continue to operate as common or joint institutions. The Ministers recommended that these institutions, namely the East African Development Bank, the Soroti Civil Flying School, the Eastern and Southern African Management Institute, the East African Inter-University Committee and the East African Community Library Services, should continue.

Furthermore, the Minister realized that political will and co-operation including security at all ends are pre-requisites for the enhancement, promotion and realisation of the re-activation of the East African Co-operation. They recommended that Heads of State meet regularly to give impetus to regional co-operation and a Commission should be established to make recommendations to Heads of State on any action aimed at attaining closer co-operation and also to guide the activities of other subordinate organs established under the Co-operation Agreement.

On November 30th, 1993, the three Heads of State met in Arusha, Tanzania and signed an agreement that was expected to revive co-operation among the three states - sixteen years after the collapse of the East African Community and nine years after the countries had agreed to divide the East African Community assets and liabilities among themselves.⁶⁶

3.1.1 Arusha Agreement November 30th, 1993

As a beginning, the leaders established a Permanent Tripartite Commission for Co-operation whose responsibility was to be to promote co-operation in various fields, including political, economic, social, cultural and security, among the states for their mutual benefit.⁶⁷ The leaders also urged the Commission to speed up the process of resolving outstanding issues of the defunct East African Community as stipulated in the East African Community Mediation Agreement of 1984.

⁶⁶ 'East African Co-operation: A Path Strewn With Obstacles'. Dr. M. Nyirabu, Department of Political Science and Public Administration, UDSM, May, 1994.

⁶⁷ Agreement of Commission signed 30 November 1993, Art. 1.

The Arusha Agreement contains thirteen articles centering on the initial steps to set in motion efforts to create an East African integration arrangement. The Agreement suggests that gradualism in realising co-operation is central. It was decided that the Commission was to be headed by the Ministers responsible for regional co-operation⁶⁸ and was to hold ordinary meetings at least three times a year and hold extraordinary meetings as it deemed fit.⁶⁹ In the event of any disagreement, matters were to be referred to the Heads of State for a final solution. All in all, the strategy was predominantly consultative. The Agreement was to last for a period of ten years and thereafter be automatically renewed, unless otherwise notified by one of the States.⁷⁰

There are at least three other important provisions to note. One is that the Commission shall establish, at the appropriate time, a small secretariat to service and coordinate the work of the Commission.⁷¹ Secondly, the Commission's Chairman shall remain in office for twelve months or until the next subsequent ordinary meeting⁷² and thirdly, it is clearly spelt out that all agreements and arrangements drawn up or entered into shall take into account existing agreements and arrangements, especially those envisaged under COMESA and the treaty on the establishment of the African Economic Community (AEC)⁷³

⁶⁸ Ibid. Art 2

⁶⁹ Ibid. Art 4.01

⁷⁰ Ibid. Art 12.00

⁷¹ Ibid. Art. 6.01

⁷² Ibid. Art. 5.01

⁷³ Ibid. Art. 9.00

Although the Agreement's aims are positive, i.e. in resolving outstanding issues from the former East African Community, there are some issues that remain superficial, for instance, it has been taken for granted that in the event of any disagreement, such issues are to be referred to the Heads of State for a final solution. A proper dispute resolution system has not been established and the Heads of State should be the last to deal with such issues considering that they were at the centre of and major reason behind the collapse of the former community. Furthermore, the strategy is predominantly consultative, hence only suggestive and since it cannot lead to affirmative action being taken, reduces its effectiveness in terms of implementation. As the EAC is not yet a legalised institution, no definite principles have been set and domestic laws have not incorporated any of the instigation of the Heads of State, who are not legally bound to their endeavours. Another problem that has not been considered is that some existing agreements and arrangements may not fall in line with proposed cooperation agreements leading to the arisal of misunderstandings.

3.1.2 Communique of Ministers, Kampala 26 November 1994

Following the Arusha Meeting held by the Heads of State, a meeting was held by the Ministers in Kampala. The purpose of the meeting was to establish an East African Co-operation secretariat to promote co-operation in priority areas, especially communication and transport, to remove non-tariff barriers in trade, the facilitation of immigration procedures, and the settlement of expenses, especialy to Uganda, of the remaining institutions after the break-up of the East African Community.

Tanzania proposed and it was agreed by the member states to expand priority areas: co-operation in environment, tourism, energy, agriculture, fisheries and animal husbandry. Furthermore, the Protocol on establishing a Secretariat of the Permanent Tripartite Commission for Co-operation was signed and it was to be headquartered in Arusha.

With regard to trade, industry and investment, the Heads of State endorsed the recommendation for: the encouragement of the private sector joint venture and enterprises in economic activities in the region, the harmonisation of tariff rates and customs procedures through regular consultations and the exchange of information, the exploration of the possibility of a customs union and the synchronisation of standards of goods.

The Heads stressed that their desire to strengthen co-operation among their countries does not in any way diminish their total commitment towards the existing regional co-operation arrangements in SADC, and COMESA.

The Heads realize that they cannot isolate themselves as a regional body without cooperating with other blocks especially in the case of Tanzania with SADC which has South Africa, an economic giant as one of its members. The East African states are not economically strong enough to stand alone and need to affiliate themselves with other bodies in order to gain advantages i.e. in COMESA, economic benefits such as the reduction of tariffs and with SADC, long-term developmental projects which they cannot afford to do on their own. In relation to SADC, this is only applicable to Tanzania, which is its only East African member.

However, controversies are bound to arise in the future EAC as Tanzania is the only member of SADC and all three are members of COMESA. These two regional bodies are competitive. South Africa has decided to join SADC which she has more to benefit from and as a result, COMESA has suffered a great loss and there are talks about its survival. Some of the areas of cooperation covered by the two regional bodies are the same and may in future lead to disputes amongst the EAC states, who may want to differ totally from the other original arrangement, but have one of their member states i.e. Tanzania, bound by other regulations i.e. SADC.

3.2 The Establishment of a Secretariat

The EAC Secretariat is an inter-governmental organisation. It has a legal personality and power to enter into contracts, acquire, own or dispose of movable or immovable property.⁷⁴ The Secretariat is to play a major role in ensuring the smooth operation of the co-operation. It was officially launched by the three Heads of State on March 14th, 1996 in Arusha.⁷⁵

⁷⁴ Ibid. Art. 3(1)

⁷⁵ Protocol establishing the Secretariat of the Commission for EAC Art. 3(2).

The Secretariat is the main executive organ of the Commission and accordingly it is responsible for:

- a) Strategic planning, management and monitoring of the programmes of the Commission;
- b) The implementation of the decisions of the Commission;
- c) The organisation and management of meetings relative to the activities of the Commission;
- d) General administration by providing secretarial services through which information shall be communicated among Member States;
- e) Keeping and maintaining records of all meetings and documents of both the Committee and the Commission;
- f) Financial management including assisting in mobilizing funds for regional projects and collecting contributions from Member States;
- g) Custody of the property of the Commission;
- h) Representation and promotion of the aims and objectives of the Commission, including informing donors and other interested parties of any relevant developments;
- i) Co-ordination and harmonisation of the policies and strategies relating to co-operation activities among the Member States; and
- j) Any other function as may be assigned to the Secretariat by the Committee or the Commission.⁷⁶

⁷⁶ Op. cit. Art. 4(3)

It was decided that decisions of the Secretariat on questions relating to the formulation of programmes and projects for East African Co-operation shall be made by the Executive Secretary in consultation with the two Deputy Executive Secretaries, provided that final decisions on all programmes and projects for the East African Co-operation will be made by the Commission.⁷⁷

The Secretariat is supposed to be small but effective and in order to be so, it must have a highly professional and dedicated core staff. It will require short term technical support from within the region and occasionally from outside depending on the specific needs.

An important aspect the budget of the Secretariat shall be funded by annual contributions by Member States in equal portions and receipts from regional and international donations, and any other sources as may be determined by the Commission.⁷⁸ A Member State who defaults in meeting the financial obligations set out in this Article shall face such action as may be recommended to the Heads of State by the Commission.⁷⁹

However, this in itself is not enough. Sensitive issues should not be left at the mercy of the Heads of State. Proper institutions should be established i.e. a tribunal to deal with defaults amongst member states. A successful co-operation arrangement does not depend upon the decisions of the Heads of State, but upon the organization and action taken by the institutionalized arrangement itself.

⁷⁷ Ibid. Art. 6(1)

⁷⁸ Ibid. Art. 7(1), (2), (7).

⁷⁹ Ibid. Art. 7(12).

Furthermore, within the institution, every sector working with the common unit must be made aware of its functions and responsibilities something that did not happen in the former community which was not specific, in order to encourage smooth operation. It is only when this occurs that there will be hope for success.

3.3 Aims of the East African Co-operation

The principal decision-making body for the Co-operation is the Permanent Tripartite Commission for East African Co-operation (EAC). However, decisions over matters which the Commission has no mandate are taken at the Summit Meetings of the three Heads of State. Such matters include the amendment of the Agreement establishing the Commission and the appointment of the Executive Secretary of the EAC Secretariat. The EAC's overriding goal is to promote a people-centered economic, political, social and cultural development on the basis of balance, equity and mutual benefit of the three countries. The EAC programmes are curtailed in a manner promoting sustainable utilization of natural resources and effective protection of the environment, the enhancement of the role of women and youth in development and the promotion of peace, security and good neighbourliness to improve the economic well-being of people in the three partner states.

It is believed that our common history and culture is a headstart as our destinies are commonly linked⁸⁰ and by pooling our resources together as one unit, we will increase the volume of productivity and trade hence liberating our people from poverty⁸¹ and bringing forth greater co-operation between our nations.⁸²

⁸⁰ President Daniel Arap Moi in speech during launching of EAC Secretariat, March 14th, 1996.

⁸¹ President Museveni, March 14th, 1996.

⁸² President Mkapa, March 14th, 1996.

3.4 Areas of Co-operation - Proposals, actions and problems encountered

The EAC falls in line with the Lagos Plan of Action (for the economic development of Africa) which inter alia stresses the need to establish institutions which can help Member States, collectively, to develop capabilities and infrastructures essential for their economic and social development.⁸³

The new initiatives to co-operation puts highest priority on economic co-operation. This is largely dictated by a recollection of the factors that led to the collapse of the East African Community and by a synthesis of the present regional economic setting. However, in order to achieve the East African Co-operation goals, political will and vision for the co-operation arrangement will have to be sustained within the Summit of the Heads of State, the Permanent Tripartite Commission, National Parliaments, Non-Governmental Organizations in East Africa and the informed general public. Therefore, in identification of areas, where co-operation will be focused, the treatment of political, security, legal and judicial matters is a pre-condition to a viable and sustainable economic co-operation.

The following areas have been identified as priority areas for co-operation and they will be elaborated on:

- i) Transport and Communication
- ii) Trade and Industry

⁸³ Chapter VIII s.258 Pla for 1980-2000 drawn up by OAU.

- iii) Harmonisation of fiscal and Monetary Policies
- iv) Security Measures
- v) Immigration
- vi) Promotion of investment in the Region
- vii) Agriculture and Animal husbandry
- viii) Energy
- ix) Environment and Natural Resources
- x) Tourism and Wildlife
- xi) Social and Cultural activities
- xii) Legal and Judicial co-operation

3.4.1 Transport and Communication

Road, rail, water, air transport and telecommunication network development is regarded as an important vehicle for the promotion of regional co-operation. Efforts so far have been and are being made towards the harmonization of vehicle dimensions, axle-load limits, road transit charges (Kenya and Uganda are undertaking the exercise under the COMESA arrangement), the facilitator of inter-state road passenger and cargo transport services (i.e. insurance, Kenya and Uganda are issuing COMESA Yellow Card insurance covers, Road safety and the licensing of inter-state transport vehicles) and police escort.

Air Transport

With regard to air transport, Uganda has been pushing for the revival of an East African Airline, currently there is Alliance Air, which is a joint venture between South Africa, Tanzania and Uganda.

The member states are reluctant to revive an East African Airline as they are still haunted by the past when the former community collapsed and Kenya ensured she benefitted most in terms of aircrafts by grounding them. Furthermore, each member state fears that having a merger would lead to a greater loss of sovereignty, a step they are not ready for. Although South Africa has agreed to go into a joint venture with Tanzania and Uganda, she too is not prepared to give up her sovereignty. Although she is assisting the East African states, she too is benefitting and at the same time while South Africa's national airline is playing a competitive role and expanding her market globally, through AJAS she is also building up her name in Eastern Africa and exploiting her market.

Civil aviation are making plans for the exchange of information with the three states, the establishment of a unified air space, the formulation of common civil aviation policies and the harmonisation of licensing procedures and air service agreement negotiations.

Railway Transport

Joint operations of the three railways, joint use of maintenance workshops, rolling stock and other equipment, the adoption of common documentation (already implemented) co-operation in research and development, the harmonization of tariffs and joint ventures with the private sector are issues that are currently being discussed.

However, although the member states are working towards joint operations, Tanzania is also working towards privatisation of her railway in collaboration with South Africa. This could in the long run lead to problems arising within the member states in their endeavours of co-operating and Tanzania will be forced to choose what is

in her best interest and in this instance she is most likely to work with South Africa who is now playing a major role in Tanzania.

Road Transport

With regard to road transport, positive action has already been taken, such as the Sirari-Isebania Road construction facilitated with the assistance from the European Union.

Maritime Transport

The three nations are revising legislation to provide for the enabling environment for private sector investment in coastal shipping.

Posts & Telecommunications

There are plans for the implementation of direct mail despatches between border towns, the interstate money-order service, the implementation of direct mail despatches and the interstate money order service.

A Regional Digital Radio project is being established in order to have efficient and a reliable telecommunication service in the region so as to foster faster socio-economic integration.

3.4.2 Trade and Industry

The freer movement of people, goods, capital and services is a basic requirement for economic integration in East Africa. It permits the free exchange of goods widens

choice and promotes the optimum allocation of labour and capital. In order to make East Africa competitive, trade and investment are vital.

The EAC has taken several starting measures, such as the checking of illegal border trade which has had positive response.⁸⁴ After the collapse of the former East African Community, the movement of people within the sub-region was restrictive. Although the three Governments have abolished visas in an attempt to rectify and implement COMESA protocol, the processing of residential and employment permits is still cumbersome.

Kenya is encouraging her sister states to introduce identity cards which will assist in the distribution of travel passes and EAC passports to East Africans, a concept derived from the European Community. The introduction of separate counters at international airports has already been accomplished. There is still doubt over the surrender of sovereignty in citizenship especially since unlike in Europe, we do not yet have a common citizenship law and it is doubtful whether East African passes and passports should be passed when the question of citizenship has not been resolved.

There is still doubt over the surrender of sovereignty in citizenship especially since unlike in Europe, we do not yet have a common citizenship law and it is doubtful whether East African passes and passports should be passed when the question of citizenship has not been resolved.

Industry is the key to the promotion of sustainable development and production and it also creates more job opportunities in the economic in the region. The aim of the Co-operation in this sector is a joint venture in both public and private enterprises, the

⁸⁴ The East African Newspaper, 19th April, 1997.

rationalisation of investments in core or basic industries and the development of sustainable industrial and technological capability.

With regard to foreign trade liberalization, the three Governments are implementing agreed measures on the abolishment of import licensing procedures, the development of foreign trade financing instruments, the establishment of correspondent banking relationships, the training of commercial bank staff and the removal of impediments to entry by foreign financial institutions.

The EAC should remove restrictive trade policies on East African goods and services in order to promote trade within the East African region first, before competing with the rest of the world. East Africa in itself has a large market for her own products. The aim of the cooperation should be to allow trade within East Africa without allowing exploitation. For instance, if Kenya is to export her beers to Tanzania, she should pay the required amount of tax in order to ensure that Tanzania also benefits in terms of revenue. It has been argued by some that the Revenue Authorities should be given autonomy, however this is impossible considering that the collection of taxes is the responsibility of the government. Furthermore, even if they were to be given autonomy, this would not change its role as the collector for the IMF, as we still have large debts to pay to the donor nations either way round. Although the introduction of VAT has been shunned by the Tanzania society, as it is anticipated that it will increase poverty, theft and reduce employment opportunities, the concept has been misunderstood. The introduction of VAT is not such a bad idea and the issue is not that people should not pay taxes, but how taxes will be used to generate income, growth and services for the majority of the people. Taxation and government levy systems should be harmonized in both raw materials and finished goods so as to provide competitive advantage to the member states against the rest of the world. Furthermore, they should ensure efficient payment systems in collaboration with financial institutions mainly the current

Treasuries, Commercial and Investment Banks, in order to promote trade and investment.

3.4.3 Harmonization of fiscal & monetary policies

The convertibility concept goes along with efforts to restrain inflation and other fiscal policies which are geared at sustaining economic growth for the whole region. Although the East African countries have agreed and already effected full convertibility of regional currencies, full liberalisation of the capital market has not been achieved yet. East African currencies are convertible against hard currencies i.e. the US Dollar, but not against each other.

There is a need to work out modalities for member states to share information on budget, tax proposals, trade and economic performance. The three East African states now read their budgets on the same day and are all trying to move in a contractionary direction (i.e. reducing government expenditure on commodity goods).⁸⁵ There is a need to co-operate in the licensing of Commercial Banks, especially those wishing to open branches in sister states. Tanzania and the other states have now acceded to Article VIII of the IMF's Articles of Association recommended to form an Association of East African Commercial Banks to facilitate operationalisation of an East African Clearing Mechanisation.

Regarding double taxation, there are plans to negotiate a treaty in order to avoid double taxation of income earned within the EAC countries. Value Added Tax has been introduced in both Kenya and Uganda and it is proposed to be introduced in Tanzania in July next year, the aim being to increase Government revenue through the expansion of

⁸⁵ Report of the Meeting of the Permanent/Principal Secretaries of Finances & Central Bank Governors on Harmonization of fiscal & Monetary Policies. April 23, 1996, Nairobi.

the tax base. The problem is that this tax is being imposed by the IMF and World Bank in nations that have no culture of writing receipts nor keeping a record of them.⁸⁶ **However, recording is not a major issue and can be worked on.**

Some argue Revenue Authorities ~~must~~ have autonomy, for instance the Tax Revenue Authority in Tanzania is still under the Ministry of Finance and it is only the Minister who can consent to tax exemptions.⁸⁷ **However, this viewppint is farfetched in that taxes are imposed by the government and revenue will go back to government in the longrun.**

3.4.4 Security

The existence of peace and stability in the region is a pre-condition for the success of any development efforts. Only where the people are free to go about their affairs unmolested can there be industrial growth and vibrant trade. Areas of co-operation include border security, immigration and training in security matters. It has been proposed that a Defence and Security Secretariat be established to co-ordinate the deliberations of the Defence and Security Committee, however the creation of a committee does not constitute an added cost to the present set up of the EAC arrangement.

3.4.5 Immigration

Plans to introduce a standard travel document for East African Nationals has already been implemented. However it is questionable whether the document will make a difference if travellers will be subjected to the same immigration and customs procedures as they are to at present. There has been the introduction of separate counters at International Airports to serve East African Nationals and the reciprocal opening of border crossing points to be manned by officials who are adequately mandated to deal with such cases.

⁸⁶ Interview with Dr. Ossoro, Economics Dept., University of Dar es Salaam.

⁸⁷ The Income Tax Act 1973, s.15

3.4.6 Agriculture and Animal Husbandry

Agriculture being the mainstay of their economies, co-operation in this sector should be strengthened in: food security, the exchange of information on food production, early warning systems, joint disease quarantine and pest control programmes, the enhancement of seed and livestock multiplication and distribution in the region, the sharing of information on food availability in the region and the harmonization of pesticides and pest control legislation.

3.4.7 Energy

The need for co-operation in this area is crucial, and it should cover electricity production and supply including investment in electricity generation, the inter-connection of the three national grids, oil distribution and storage, oil exploration and other forms of energy.

3.4.8 Environment and Natural Resources

There is a need for the careful management of natural resources and the protection of the environment is vital for sustained development of our resources. In April 1995, a Tripartite Accord for the Establishment of Lake Victoria Authority was drafted. Under Article 4, the objectives of the Authority are to establish a regulatory framework/machinery for the development of Lake Victoria region by providing for the harmonization of institutional operational norms, standards and recommended practices

in areas pertaining to the overall process of policy formulation and implementation coordination, the institutional operational harmonization, resource mobilization and the utilization coordination.⁸⁸

3.4.9 Tourism and Wildlife

Service and tourism sectors have been singled out due to their potential in promoting trade development, foreign exchange earning, investments and job creativity. No country within the East African enclave can claim to have so many tourist attractions to want nothing from the other and none can claim that it has too little to offer the others.⁸⁹ The issue here is whether the tourist industry will be beneficial to all of them on the basis of equality.

The aims of the EAC are to harmonize activities, tourism policies and to constitute themselves into a committee for the purpose of liaising and updating their policies. They will also consider the free flow of tourists and vehicles ferrying them across borders of the three states, the allowing of planes to land directly into national parks, the harmonisation of visas and health requirements, the ban on hunting in all wildlife parks along borders, the intensification of anti-poaching operations across borders and the encouragement of joint tourism sporting activities.

The Commonwealth Fund for Technical Co-operation has also agreed to assist the carrying out of a study on the liberalisation of the tourist industry in East Africa towards a single market in the region and also a strategy for joint promotion of tourism.

⁸⁸ The EAC Draft Tripartite Accord for the Establishment of Lake Victoria Authority, April 1995.

⁸⁹ National News, 17th January, 1997.

3.4.10 Social and Cultural Activities

Social and cultural activities are critical components for enhancing closer co-operation. The people of the three countries share more or less common cultural heritage. The areas of co-operation will include education and professional training, science and research, health and cultural activities.

3.4.11 Legal and Judicial Co-operation

In order to encourage economic and social development and uphold democracy and the rule of law, it will be necessary to put into place an enabling institutional, legal and judicial framework. The possibility of establishing the East Africa Court of Appeal has to be examined.

After the collapse of the former EAC, each member state established their own Courts of Appeal. With the new EAC, the three states should work towards establishing a common court to deal with East African issues that cannot be settled. In order for an issue to be addressed to the East African Court of Appeal it should first be addressed by the national Court of Appeal or if it is an East African issue only the go directly to the East African Court of Appeal. Furthermore, an East African Court on Human Rights based along the samelines as that of the European Union should be established.

Today courts in East Africa are faced with increased workloads, institutional complexity and scarcity of resources. Within this context, an organizational and individual commitment to judicial education must be made and this can be achieved by providing judges and magistrates with the knowledge, skills, techniques and awareness

required to perform their judicial responsibilities fairly, to improve and enhance through education the administration of justice, including the reduction of court delay. There must also be the promotion of each judge's commitment to the highest standards of personal growth, official conduct and social awareness.⁹⁰

3.5 East African Economic Co-operation Synopsis & Lessons

The formation of regional economic blocs has in recent years emerged as a powerful tool for the stimulation of economic growth and development. This decade has witnessed the coming together of countries into economic blocs. Developing countries, especially in Africa, risk being sidelined as an Economic Grouping. Developed countries usually impose trade conditions which restrict the entry of goods into their markets. The establishment of the EAC a small block, as an economic zone is a logical response to the developments on the international scene. Big blocks are an economic advantage only if they have a capacity to produce finished commodities for the market, a potential that the East African region does have, but does not explore. We should not encourage a buyer's only rather than a producer/buyer common market. Africa has great potential and should make the most of it i.e. Tanzania with regard to cotton produces and exports it in its primary phase as a raw material, yet instead of making cloth in our industries which have been left to rot, we import materials from abroad. This is becoming even more difficult to control with the liberalization of the economy.

Although the EAC may seem beneficial, questions have been posed on its future; is the new EAC just 'old wine in a new bottle,'⁹¹ how are the East African states going to prevent a repeat performance of the last decades and why revival?

⁹⁰ Report of the Meeting of East African Judicial Education Committee, September 2-4, 1996, Arusha.

⁹¹ Dr. Nyirabu, Dept. of Political Science.

It has been argued that the major difference between co-operation now and co-operation then is that EAC today is trying to build a community of the people of East Africa, not a community of governments. Furthermore, it has been stated that the current EAC recognises the main stateholders of the co-operation as consisting of the three governments, parastatal organizations, the private sector, private sector organizations and civil society. Co-operation is based on 'individual greed'⁹² which is more lasting, than on government decisions. Current decisions are done at ministerial level and therefore it is easier to reconcile Members of Parliament than Heads of State, hence making decisions faster easier, and preventing individual conflict between leaders. Government's role is merely to create an enabling environment for that to happen. Co-operation could assist in the development of large-scale industries that will be able to sustain them and the enlargement of resource bases, i.e. Uganda Supplying power to Kenya whose capacity to generate electricity has almost been exhausted.

3.5.1 Aspects for the Prevention of Failure of the EAC

In order to prevent in East Africa from failing, the following issues should be resolved.

The three nations economies are quite similar and they are all facing Africa's predicament, that is, a crisis of underdevelopment. The crisis centres on the relationship of dependency and exploitation in trade, technology, financial transactions i.e. paying our large debts and other structural distortions i.e. taking more loans. In fact, thirty years after political independence, they are still exporting primary product based economies i.e. cotton and copper which in some instances is not so badly required where there are synthetic substitutes. with trade liberalisation East African States will end up importing more than they are exporting enhancing the unbalanced trade effect and pushing the African Continent as a whole further back to undevelopment.

⁹² Dr. Nahamya, Deputy Executive Secretary (Finance & Admin.) of EAC. Interview, July 25th, 1996.

However, this argument holds little weight. Since the establishment of the new EAC, there has been minimal interaction with the media and non-governmental institutions. Although it has been claimed that the main aim of the cooperation is to build up a community of the people no definite organs have been established to cater for the public and it is only recently that the Secretariat has decided to recruit a public relations officer. Up until now, any developments in the Cooperation have been made and decided by the three governments and the people have only come to hear about their decisions mainly through newspapers after the event. The people are not involved in the actual decision-making.

There is a belief in East Africa that integration efforts should be anchored in lowering tariffs, but this is not an impediment to trade among the East African countries especially since what we have to sell is limited. The major reason for the lower level for trade is to be found in the economic structure of the countries. The economies of virtually all of them are directed to the export of primary produce and the import of manufactured goods.

Furthermore, many leaders feel that by becoming a member of a regional organization, they must benefit, without realizing that one cannot benefit without investing.⁹³

In East Africa, there is conflict between community goals and individual state goals. The major reason suggested for the collapse of the EAC was the lack of reconciliation of individual sovereign desires and community desires⁹⁴. There were personal differences i.e. between Nyerere and Amin later on when the latter overthrew Obote, a close friend of Nyerere's, and he vowed never to sit on the same table as him

⁹³ Interview with Dr. H. Sinare, Advocate & Senior Legal Counsel, PSRC, April 1997.

⁹⁴ See African Review, Vol. 8 No.s 1 & 2 Special Issue on the Collapse of the EAC.

again. No one could reconcile their differences. Furthermore, no major community decision could be made without approval from the three governments hence delaying procedure and taking the community a step backward. In the past, it used to be decided for the investor in which field i.e. tyre factory to invest, now it should be up to the investor. Furthermore leaders should be more co-operative in that, instead of closing borders, they should take more positive action in working towards their goal.

In 1991, the Kampala Forum on Security, Stability, Development and Co-operation in Africa, while acknowledging that every African state is sovereign, argued that the security, stability and development of every African country is inseparably linked with those of neighbouring African countries.⁹⁵

Now efforts towards co-operation should be geared away from politicians, due to changes in East African behaviour which has eroded faith in the usefulness of politicians. An overview of the Arusha Agreement itself shows very clearly the very limited commitment of East African leaders. The lack of a sectoral policy and strategy has lead to the thin spread of scarce resources over a wide range of activities, with minimal gains.

Another dominant factor that has to be addressed is the role of the Bretton Woods institutions, namely, the World Bank and the International Monetary Fund. All three states are operating under the dictates of these international financial institutions. Secondly, although the structural adjustment programmes are standard packages i.e. economic liberalisation, the commercialisation of parastatals, the removal of exchange controls and state subsidies, their imposition and implementation have stressed single-country economic policies that are sometimes incongruent with economic integration. East African nations are over-whelmingly dependant on foreign finances for long-term

⁹⁵ 'Africans Seek Homespun Remedies in Kampala', African Report, July-August 1991.

development plans and even recurrent budgets. The EAC must remember that donor's interests may not always favour the promotion of regional co-operation or may favour a particular type of co-operation, so they must look for an alternative source of income.

East African nations are more or less losing their sovereignty because of aid dependence. Current governments for the foreseeable future are structurally inextricably tied to the muscle of financial reliance from the West and may therefore not be in a position to embark on serious economic co-operation i.e. in 1991, donor governments and agencies halted aid to Kenya, demanding economic and political changes.

Current efforts must not overlook deep-seated and long-standing rivalries in development among the three countries. Even recently in 1995/96 there was 'wire-pulling' between Uganda and Kenya on which country should provide the first Executive Secretary to the EAC. It was among other things, the failure to make decisions that led to disintegration of the former EAC. Current efforts would have to address topical issues such as trade imbalances instead of putting them on the shelf. Furthermore, the three states should not feel that it is only when they attain the same economic level that they can develop fully, that criteria is not essential. In fact dealing with unequal development laid down the seeds of further disintegration in the former EAC. This has been proved within the European Commission i.e. France and Portugal are still working together to improve both their economies, although one is much richer than the other.

3.5.2 Future Prospects

It is questionable whether the three states who were not present at the creation of the defunct EAC can ensure the success of the Co-operation without making the same mistakes. However, it is also realized that the EAC is necessary not only as it is a move towards economic co-operation which will be beneficial to all, but also East

African nations are too small to exist separately. East Africa should not remain stagnant, especially as the time element favours working towards co-operation. Blocks are getting larger and as a block get bigger, the more power it has.

3.6 The EAC in relation to other trading blocks

Unlike the Co-operation arrangement for the defunct EAC which was mainly based on joint ownership of common services, the new initiative is based on the creation of an enabling environment for the establishment of a single market and investment area. The EAC is important and significant not only for the three countries alone, but also within the context of COMESA and the wider context of African Unity and integration.

The role of government is progressively being reduced. The approach to regional co-operation will rely more on market incentives rather than on administrative discretion for its incentives and preferences.

In order to facilitate the success of the East African Co-operation initiative, regional integration is also being viewed within the framework of the larger integration schemes such as COMESA. Recent experience in regional integration has indicated that the approach to larger regional integration should allow for flexibility and incorporate the principle of 'variable geometry', allowing for progression in co-operation among a sub-group of members in larger integration schemes in a variety of areas and at different speeds. Also experiences has indicated the need for integration schemes to incorporate the principle of 'subsidiarity'.⁹⁶ This principle emphasizes the importance of multi-level participation and involvement of a wide range of stakeholders in the process of integration, implying that all actions will be allowed to influence developments in the

⁹⁶ Mvungi, Ph.D. Thesis, p.60.

regional co-operation arrangements and highlight the sensitivity to the interest of various groups.

Market access is becoming more difficult for those who are not internationally competitive. The finalisation of the Uruguay Round Agreement and the establishment of the World Trade Organization signify a formalisation of this process. The reduction of the Most Favoured Nation (MFN) tariffs will erode the margin of preferences that developing countries including countries of the region used to enjoy, especially under the Lome Conventions. One outcome of the Uruguay Round is the dilution of many discriminatory aspects of regional agreements and the promotion of 'Open regionalism'. For example, by reducing tariff preferences for regional partners through multilateral tariff reductions, and targetting the end of MFN status in ten years. Under the current agreement the extension of Preferential Treatment under regional co-operation to the rest of the world is going to be mandatory.

3.6.1 Enhancing Co-ordination with other Co-operation Arrangements

The instruments setting up the East African Co-operation, including the Agreement for the establishment of the Permanent Tripartite Commission, take cognisance of existing regional co-operation arrangements and agreements binding the Member States. These include setting up of the OAU, COMESA, SADC and IGAD. Regional groupings aim at bringing about faster economic development within their respective membership regions. This is in line with the spirit of the Lagos Plan of Action, which sees regional groupings as pillars of the African Economic Community, an aspiration that is supposed to be concretised through the implementation of the Abuja Treaty.⁹⁷

⁹⁷ Establishment by the African Economic Community Treaty, June 3rd, 1991, Abuja, Nigeria.

3.6.2 SADC, COMESA and the EAC

The EAC, like SADC and the former PTA, were established against the background of poor social, political and economic environment, such that their full impact on the regional economy will take time to be felt. Both SADC and COMESA aim at promoting 'growth' and 'development'.⁹⁸

Like the EAC, the COMESA Treaty has the following aims: trade liberalization and customs co-operation, the establishment of customs union, the abolishment of all non-tariff barriers to trade and the harmonization of trade.⁹⁹

Although COMESA hopes to finance its activities mainly through membership subscriptions and the business transactions amongst its members, SADC largely depends on aid and it has been chosen to be the main instrument to further the interests of some of the most important Western powers in the region. South Africa, Africa's economic giant, is a member of SADC and not COMESA. Tanzania is a member of both SADC and COMESA. The question posed by many is whether there is a need for the EAC when we already have SADC?

Kenya and Uganda are not SADC members, although they are members of COMESA and the EAC. The challenge here is whether Tanzania and the other member states can strike an appropriate balance between these three memberships without either being termed 'biased' or serving two masters!¹⁰⁰

It is the view of the EAC that by establishing such a regional body, the East African states become a stronger entity and have more power in decision-making which

⁹⁸ SADC Treaty Art. 5(1)(a), COMESA Treaty Art. 3(a).

⁹⁹ Art. 4(1)(a).

¹⁰⁰ 'East African Experience with Integration & the Challenges for the Future' - Moshi & Kilindo, Economic Research Bureau, July 4th, 1995, DSM, p.16.

will be to her advantage against other regional trading blocks which her member states are not party to.¹⁰¹ However, the issue raised here is how this will be accomplished when the three states belong to other regional organizations not necessarily the same ones i.e. SADC and IGAD. It is questionable whether they will be able to balance out the different policies for instance the action to be taken if there are differences in the two organizations tariff rates.

Dr. Mvungi states that perhaps Kenya wants the EAC to continue in order to ensure that connections that existed in defiance of the economic embargo against South Africa should continue in a new form now that Democratic South Africa is a member of SADC. He further proposes that Kenya and Uganda apply for SADC membership and within SADC team up with Tanzania to re-integrate the EAC infrastructure into SADC.¹⁰² This suggestion is wise in order to prevent duplication and overlap, one of the main reasons causing SADC to pull out of the PTA.

One of the problems of African leaders is that they have tended to divert their efforts and attention from the main thrusts of the organizations they form, transforming them into mere politician's talk shops, devoid of any substantive economic development goals. This explains why it has become so easy to sign 'Treaties' regardless of whether they are feasible or not, for example, Mozambican President Chissano signed the COMESA Treaty after openly declaring in Swaziland at a SADC summit, that his country had "very little if any economic trade and cultural contacts" with non-SADC/PTA members.¹⁰³

The EAC and SADC are establishing close contacts and exchanging information of mutual interest. They have agreed to have regular consultations with a view to

¹⁰¹ Mr. Francis Kabyasiza, former Legal Counsel for EAC, interview Sept. 1996.

¹⁰² Mvungi, S.E. Ph.D. Thesis, p.119.

¹⁰³ Southern Africa, Sept. 1994 - Fernando Goncalves "SADC & PTA/COMESA PART WAYS".

signing a Memorandum of Understanding. The OAU's Policy Analysis Support Unit (PASU) has similarly expressed a willingness to collaborate with the EAC Secretariat on various tasks aimed at deepening regional co-operation.

With regard to COMESA, it is difficult to determine its future. COMESA's main focus should have been on integration and trade, however member states wanted it all and brought in unnecessary programs, i.e. health and environmental programs which can be catered for by the World Health Organization and the United Nations Environmental Program. However the main fear is that by removing certain programs, jobs will be lost. The EAC should learn a lesson and be specific in choosing its programs in order to avoid embarking on unnecessary programmes..

Another problem with COMESA is that it is centrally controlled hence little is achieved, for instance, the introduction of the UAPTA Travellers cheques was a top-down decision and did not leave room for much investigation. Its effect has been negative in that the cheques are restricted to use within member states only and the settlement of the cheques is through COMESA Clearing House alone which is not very appealing. If COMESA were decentralized it would allow room for flexibility, hence encouraging the accomplishment of more work at a faster speed. At present the management team has little power to motivate the staff. A problem that the EAC has like COMESA is that they are manned by civil servants and still 'clocked by the usual bureaucracies'.¹⁰⁴ The EAC should encourage decentralization and play a facilitatory role.

The EAC should not limit its perspective and should consider other regional groupings before making decisions. Lessons should be learnt from nations like Mauritius who have changed their way of trade and allowed external investors, instead

¹⁰⁴ Interview with Dr. H. Sinare, Advocate & Senior Legal Counsel PSRC, April 1997.

of relying on subscriptions or direct donor funding. East African states should not envisage investors as being exploiters and them the exploited, as they do not enter a nation barehanded. Furthermore, other countries are doing it and benefitting. The EAC Secretariat should also play a very active role as it can influence the thinking of member states. It should only focus on activities that advance integration and if COMESA had focused on her major priorities and plan of action perhaps Mozambique and Lesotho would not have pulled out.¹⁰⁵

3.6.3 The European Community and the EAC

The European Union also has an interest in the EAC, to the extent that the European Union took a leaf from the former EAC treaty.

Traditionally, the East African nations are their trading partners and with Northern America focusing on South America, the European Community does not want to lose power in Africa and is therefore interested in finding blocks that they can use to their advantage. They are doing this by offering funding to fertile regions with potential i.e. the African, Pacific, Caribbean Countries (APCC) and African countries through their Lome Convention in the form of soft loans given interest free. In East Africa they have secured funds for a Lake Victoria Cleaning Project.

¹⁰⁵ Namibia is also pulling out of COMESA.

4.0 PROPOSED LEGAL FRAMEWORK

The reasons behind the downfall of the East African Community have been discussed and the 1967 Treaty scrutinized in order to see whether there were any defaults in the treaty. The main problem was not that laws were not there, but that they were unclear and lay at the mercy of national governments. Partner states determined the future of the Treaty and its legal regime. In order to make regional integration a success it must be based on a legal structure.¹⁰⁶ In future, the new treaty should provide for supra nationality, that is the autonomous existence of the cooperation from that of the member states and it should have the legal capacity to make decisions that are binding upon the member states and their subjects. In Europe, this was emphasized by the European Court in Costa v. ENEL.¹⁰⁷ Furthermore a lack of coordination of incentives undermined one of the main reasons for having a Treaty and to make matters worse, the Authorities i.e. the three Heads of State, did not meet for five years during the Amin regime trying to deal with unequal development laid the seeds of further disintegration; for example in industries, it was decided that tyres should be produced in Tanzania, however Kenya in the long run decided that she too wanted to have a tyre factory not wanting to lose out in the long run. This was an example of the dominance of one state over the others.

However, even with the collapse of the former EAC, certain institutions and services continued such as the Soroti Flying School, Inter-University Council and ESAMI.

With the revival of the East African Co-operation, several initial measures have been taken in order to make the Co-operation work and after several meetings between Heads of State and Ministers, areas of co-operation have been agreed on establishing the aims of the EAC. There have been hesitations as to the effect of the Co-operation

¹⁰⁶ Interview with Mr. Kaahwa, present Legal Counsel for EAC, Arusha, Jan. 1997.

¹⁰⁷ (1964) E.C.R. 585, (1964) C.M.L.R. 425.

i.e. whether it will succeed and whether it will break away from the theory that history always repeats itself. The only way of doing this is to identify earlier mistakes and tackle them accordingly.

There are several issues that should be worked on. The EAC should focus on a few aspects related to improving economic integration instead of making too many commitments and ending up with a poor performance. First and foremost, it is clear from the analysis that the areas of co-operation are too many to be dealt with accordingly. The EAC should narrow down the areas in order to carry out co-operation effectively. Furthermore, it must be remembered that there are other programmes for instance under the auspices of the UN, such as UNED, who are working on projects, such as environmental issues. The task of the EAC should be to inform them, asking them to take action and assist them accordingly, without having to deal with the matter alone. This method is more economical and reduces the work load.

Areas that should be concentrated on by the EAC are those such as trade and industry, transport and communication and fiscal and monetary policies. Only suggestions of a legal set-up for a few areas of co-operation will be discussed, leaving the others for future researchers.

The problem with the current EAC is that there is no Treaty. Although plans are being made to conclude one this year, currently the Heads of State are not legally committed to their endeavours. The current agreement provides for a transition period of ten years. Treaty status would enable member states to enter into multilateral negotiations as a single entity while retaining safeguards for national and regional interests, particularly those related to investment and trade.

The Co-operation must lay down a foundation for each country to have an industrial take off in order to improve their economies. Problematic areas of co-operation should be pointed out and measures taken to help clarify them, for instance in dealing with fiscal and monetary policies i.e. in the field of taxation, government levy systems and taxation should be harmonized in order to provide competitive advantage.

Unlike the former EAC which failed to allocate the various institutions which should carry out which task, the current EAC should draw up a Treaty which allocates responsibilities, the benefits to be accrued and how they are to be assessed, in order to provide clarity.

Although the 1967 Treaty catered for several areas of development, it did not focus on production, unlike the current European Community which is not concerned with particular industries developing in a certain nation, but the overall development of a certain type of industry, its production capacity and which market the goods will be distributed to the European Community is protectionist even against developing countries and they discourage the granting of subsidies whereas in East Africa we are concerned mostly about exporting our products and do not heavily tax imports.

Currently the participation of people in what is occurring in the EAC is limited. Information obtained is mainly through newspapers and television. In Europe, governments went as far as allowing their citizens to vote on whether they wanted a European Union or not and took action accordingly. Therefore, whereas in Europe major decisions cannot be made without consulting the nationals i.e. a grass-root approach, in East African although there are claims that this time around the co-operation will take a top-down approach, moving away from the autonomous decisions of the Heads of State without involving the public, this line of action has not yet been taken. In East Africa news is usually received when the event is taking place.

It is important for the media to be concerned and involved in what is happening within East Africa. This has not been the case to date. Although there are claims that the people of East Africa were for the rebirth of the EAC, they were not consulted in any way either through opinion polls or any other way proving that the EAC is still being alienated from the grassroots. Governments need the advice of the people in economic matters, such as businessmen, lawyers, economists. Creating a gap in public relations could lead to another collapse of the EAC.

There is a need for internal organization, for instance in the field of trade. East Africa is rich in mineral products such as copper and gold. Developed countries should be made to buy the products on the continent even if its in raw form prices should be adjusted accordingly. However, Africans should be encouraged to promote her industry from producing and selling raw materials or primary products to establishing industries that can use these primary products to make goods that either developed nations will buy in the nations or goods that can be exported. Strict policies should be implemented in order to prevent investors involving themselves with government policies i.e. in Kenya. East Africa should give priority to developing and catering for her own market first before dealing with export, in order to build up her economy. However, this does not mean putting a stop to co-operating with other nations.

Member states should not use the other members for their own means and clauses should be inserted in the Treaty to prevent that from occurring, for instance the Kenya/Tanzania tourist problem, whereby it is felt by Tanzania that she is being exploited by Kenya who wants to use Tanzanian wildlife and have visitors attracted to accomodation in Kenya, hence maintaining most of the foreign currency. Laws on equal distribution should be drawn.

Support services such as roads, posts and telecommunication should be given priority as they are vital in enhancing communication.

Another factor to be considered are monetary policies. Exchange problems run trade relations between states. If currencies are the same however, transactions run more smoothly. In order to have a single currency the highest level of production must be reached. Single currency is a problem even in Europe with Britain not wanting to give up her sovereignty. A solution would be the use of a similar currency unit such as ECU (the European Currency Unit) in order to hold transactions. It is calculated like the SDR of the International Monetary Fund and hence easier to use. The future EAC treaty should adopt the same principle in order to promote investment in the region, without having to rob each nation of her full sovereignty leading to the rising of conflicts.

Furthermore, learning from past mistakes, success would require that the EAC organs are made to operate above ideological differences and personal dislikes. Although cooperation among the three states is encouraged by political will, East African nations should ensure that they create organs which can function in spite of possible misunderstanding in the political circles. The Treaty should identify measures that benefit all members, thereby facilitating joint decisions that intensify integration.

It is desirable that such organs like the East African Legislative Assembly and the East African Court of Appeal are revived. However, instead of appointed members by the governments they should be voted into office by the people of East Africa in the respective member states. Experience from the European Union shows that it was not only governments which submitted to the supranational organs of the EC but also their citizens became bound by the new rights and obligations of regional institutional organs. In the East African context such regional organs should be responsible in the major

aspects of regional integration. For instance, budgetary, broad policy issues and the enactment of regional laws.

There is the fear that the EAC states are committed to too many regional organizations. This in itself could lead to several complexities, especially since it must be remembered that these other regional bodies have already formulated their own laws and policies. Since the EAC is still a new body, the difficulty will be in harmonizing these laws with her own. A problem that might arise is an example of clashes in laws such as in COMESA and the IGAD. The problem here would be, since the EAC incorporates states that are also members of the other two organizations, which laws should the EAC enact and what will occur if she disagrees with laws already set, will this create animosity between the states? Although by co-operating the EAC may end up to be a stronger economic block, these factors must be taken into consideration, especially in the drawing up of the treaty.

For the Co-operation to succeed, there must also be the encouragement of free movement of persons in order to promote trade in the region. The EAC has 'jumped the gun' by introducing an EAC passport and flag.¹⁰⁸ before the drawing up of the treaty, hence bringing up the question of the legality of their actions and on what grounds their action was taken. Furthermore there has been the introduction of separate counters at International Airports for East Africans. Although these ideas have been introduced in other regional bodies such as the European Union, not all these measures are necessary for the EAC. The European Community is a larger, more powerful regional body recognized internationally. Their actions are calculated and based on a treaty.¹⁰⁹ The introduction of a flag and passports symbolizes citizenship/nationality and sovereignty. Not only does the EAC not have a treaty, it has not yet defined who an East African citizen is and even if it had the next question would be under what legal basis, and what

¹⁰⁸ Inaugurated on April 28th, 1997.

¹⁰⁹ The Maastricht Treaty.

legal entity does the flag represent? So far, it seems that the EAC passports have been issued to facilitate movement as far as the sovereign states are concerned. However, this is a wrong approach and they should not be used as identity cards. Furthermore, just like the traveller's cheques introduced by COMESA that can only be introduced in the COMESA countries, the EAC passport can only be used in East Africa, hence it is not cost effective. Instead of printing several passports, the money could have been used for more positive issues. This should be a lesson to the EAC. Not only must they establish their priorities, they should also learn from the mistakes of other regional bodies, as liability ends up falling on the member states. Furthermore the EAC must be clear as to why they introduce i.e. a flag, if it is because of the sovereignty of the states or just for the sake of it.

5.0 CONCLUSION

Faced with the problems of industrialization, modernization and self-sufficiency, integration in East Africa can be perceived as being a viable solution. Although the areas of co-operation of the East African Co-operation have been defined, it is clear that much work is still needed in order to concretize the establishment of the Co-operation, including a legal set up. So far, the EAC is focusing on economic co-operation, as opposed to the establishment of a community which would rob the member states of their sovereignty and lead to further problems in the future.

Although a single political federation is still envisaged it is not expected to occur in the new future. The main objectives at present are to work towards one investment center and a single market economy. If in future the conditions are conducive to start up a presidential and policy co-operation, starting with national Parliaments and gradually moving towards a directly elected East African assembly and hence ultimately a federation, then this will be discussed accordingly, after all 'Rome was not built in a day.'¹¹⁰

At present, economic co-operation is best for East Africa, as she is not yet politically mature to handle the establishment of a community. This can be demonstrated by the uprisal of continuous little disputes between Kenya and Uganda often based on rivalry, for instance in the electing of the first Executive Secretary for the Secretariat. Furthermore, although the three member states claim to now have the same ideology, Kenya is a well-established capitalist state, whereas Uganda and Tanzania are trying to go capitalist therefore they are still at the trial and error stage, while Kenya, yet again, is a step ahead of them.

¹¹⁰ Interview with Mr. Francis Kabyasiza, former Legal Counsel for EAC, Sept. 1996.

Economic co-operation should be a starting point, as it is vital to all three states. In order to achieve the objectives, there are certain conditions that should be given serious consideration. These include the need to facilitate the provision of adequate and reliable infrastructural facilities and services in i.e. transport, communication and energy sectors. There is a need to harmonize macro-economic and sectoral policies with a view to facilitating the movement of people and capital and the flow of goods and services as part of inter-state trade and investment promotion efforts.

Thirdly, investors should be assured that the macro-economic environment will remain stable and that the nationalization of private capital is not an issue. There is a need for serious commitment which itself depends on the anticipated benefits of economic co-operation. The more it is perceived that integration can contribute towards removing or reducing the economic problems and difficulties of partner countries individually or collectively the higher the commitment.

Finally, is the removal of trade barriers, although this is not enough to ensure an increase in investment. An integration approach should be used for the economic benefits to each of the member states in order to ensure that regional integration occurs.

On the whole, although the EAC is a regional body that is worth reviving, it still has plenty of lessons to learn before she achieves economic development. However, it is time we 'placed our future in our hands.'¹¹¹

Although the process may take time until positive results are envisaged, it is the long-term achievement of the co-operation that is important and as Julius Nyerere once stated:

¹¹¹ Olusgun Obasanjo, Africa: The Year 2000 and Beyond, Lecture on the occasion of the ECA's Silver Jubilee, Addis Ababa, April 1987, p.32.

"Building up Third World self-reliance, nationally and collectively, is not a miraculous answer to our problems. It will take time, a long time. And it will be difficult East Africa is an example of the tragic failure in Third World Co-operation. There have been failures and there may be more in future. Yet every successful effort at Co-operation strengthens the whole Third World in its dealings with the developed world. We must all keep trying...."¹¹²

¹¹² Nyerere, J.K., Unity for a New Order, Govt. Printer, DSM, 1979.

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