



Vol. 10 | Social and development concerns in Africa (c)

Vol. 10 Article 4/10 | October 2019

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(An International Publisher for Academic and Scientific Resources)

CRITICAL ANALYSIS OF THE DECISION TO ADOPT A CONFEDERATION IN THE EAST AFRICAN COMMUNITY

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Abstract: *The aim of this paper was to do a critical analysis of the decision to adopt a confederation in the East African Community. The study sought to examine the factors that contributed to the decision to adopt political confederation in the EAC, find out the views of EAC elites on the value of a confederation for political federation and determine the consequences of the decision for governance in the EAC states. The study adopted a cross-sectional survey which is best suited for a single point of data collection for each participant. The study found that the decision to adopt a political confederation was based on the need by EAC member states to first address the underlying fears and concerns highlighted the findings by the Wako Committee. These include Loss of Sovereignty Fears and Concerns Ideological differences Regional disputes, Disparities in Governance, Lack of Clarity on Model of Federation, Fear of Loss of Land, and Economic fears like loss of revenue, loss of jobs for members of professional bodies, loss of investment and employment, loss of market. This study also found that that a confederation if adopted in the EAC will have little impact on governance in the individual EAC member states. This is because confederation will simply be voluntary associations of independent member states which will not provide for an effective executive authority. The lack of viable central governance implies that the same norm of lack of rule of law, corruption, human rights violations, lack of transparency and accountability will still be the norm in the EAC member states. Despite the above shortcomings, the elites within the EAC insist that a political federation is possible and the best way to go for EAC.*

Key terms: *Confederation and East African Community*

1.1 Study background

The East African Community (EAC) is a regional inter-governmental organization uniting its six partner states in the ultimate goal of establishing a political federation, the East African Federation. After the collapse of the previous community in 1977, the EAC was re-established on 30 November 1999, by the presidents of Tanzania, Kenya and Uganda in a treaty signed in Arusha (Mughwai, 2010). Since its re-establishment, the EAC has become one of the most powerful regional economic blocs in Africa especially after Rwanda and Burundi joined the bloc as new members in 2007 (Mwaseba, 2010; Mughwai, 2010). The East African Customs Union became operational in 2005, and a protocol for the establishment of the EAC common market was signed in 2009 and operationalized in 2010. The Common Market has ensured the free movement of labor, goods, services and capital throughout the region. The monetary union and political federation are next on the EAC agenda. According to Balongo (2015:3), If the political entity sees the light of day, it would be the third-largest and second-most populous bloc in Africa.

Post-colonial attempts at political federation date as far back to 1963 when the three East African states of Kenya, Uganda and Tanzania signed the Nairobi Declaration of 1963 (Biira 2017). The declaration was signed by Prime Minister Milton Obote of Uganda, Jomo Kenyatta of Kenya and President Julius Nyerere of Tanganyika. This however, was never operationalized due to various factors. Uganda for instance was opposed to the high degree of centralization of power, which other members had suggested for the federation (ibid: 158). There were also other national priorities. The ruling regimes in the three countries were engaged in intensive battles for political domination and hegemony at that time thus challenges of nation building and regime consolidation demanded a national focus and not a regional one (Mukandala 2000:95). The situation pertaining then impelled Mwalimu Nyerere to write in the following terms;

“A federation of at least Kenya, Uganda and Tanzania should be comparatively easy to achieve. We already have a common market, and run many services through the common services organization which has its own central legislative assembly and an executive composed of the Prime Ministers of the three states. This is the nucleus from which a federation is the natural growth.” (Ademola 1999:91)

Mwalimu Julius Nyerere made several attempts and one of them was offering to delay the independence of Tanganyika in order for the other East African states Kenya and Uganda to gain their independence such that there would be a federation immediately (Biira, 2013). Despite this, the British denied his wish so the East African Countries attained independence at different times on territorial basis hence the federation did not happen.

“We the leaders of the people and governments of East Africa assembled in Nairobi on 5th June 1963, pledge ourselves to the political Federation of East Africa. Our meeting today is motivated by the spirit of Pan Africanism and not by mere regional interests. We are nationalists and reject tribalism, racialism, or inward looking policies. This is our day of action in the cause of the ideals that we believe in and the unity and freedom for which we have suffered and sacrificed so much..... We share a common past and are convinced of our common destiny. We have a common history, culture and customs which make our unity both logical and natural.” (Hughes 1963:265). This declaration made by the leaders was a strong wish they had on the basis of Pan Africanism to lead the people of East Africa into African Unity. The leaders believed that through a political federation, Pan African Unity would be achieved. And just as the new EAC leaders have done through devising means of seeing this dream to reality, the leaders in 1963 decided to set up a committee that was supposed to spearhead the drafting of the constitution of the federation of

East Africa.

The second document which attempts to establish an EAC federation, is the 1999 EAC Treaty that states that the political federation is the ultimate goal of regional integration (Biira 2017).

Article 123(6) and (7) respectively of the Treaty provides that the Summit shall initiate the process towards the establishment of the Political Federation by directing the Council to undertake the process. In pursuant to Article 123 (6) of the treaty, in 2004, the Summit of EAC Heads of State established the Wako Committee on Fast-tracking the East African Political Federation to examine ways and means to expedite and compress the process of integration (East African Community Secretariat, 2017). The Committee basing on their findings that East Africans felt that the political Federation was an idea, whose time had come, recommended the launching of the East African Federation by 1st January 2010. However, the Committee's assessment of the process of transforming the EAC into a Political Federation revealed that it was a delicate process due to the various fears and concerns among East Africans.

Similarly Krakowka and Hummel (2009; 3) explain that a political federation would require member states to surrender their sovereignty to a regional government which would take over defense, foreign policy, fiscal and monetary policy; have some legislative authority and final appellate court jurisdiction (Krakowka and Hummel, 2009). This setting according to Mwesaba (2010) will hardly work in the case of the EAC given its political environment, characterized by disparity in political culture and practice among the six partner countries, ethnic differences and political instability in some member states as a result of deep rooted tribalism and access to resources, particularly land. Based on these, the Summit in 2009 instituted a Team of Experts to make recommendations on how to address Fears, Concerns and Challenges towards fast tracking of Political Federation raised by the Wako Committee (East African Community Secretariat, 2017; 3). As a result, a Model structure of Political Federation was done by the Secretariat and considered by the 14th Summit of Heads of States in 2012. Owing to the report of the partner States -wide consultation on the draft EAC Political Federation Model, the 33rd Meeting of the Council of ministers observed that, upon further consultations, all Partner States had generated convergence on Confederation as the model for the East African Federation. The Summit directed the Council of Ministers to come up with a team of Constitutional experts to draft the Constitution for the East African political confederation (Ministry of East African Community Affairs, 2017).

1.2 Statement Of the problem

The adoption of political confederation is and remains an attempt by EAC member states to forge a way towards achieving political federation. According to Glencross (2007:2) a confederation is an associations of independent states designed to last a long time, in which power is exercised by the state units, or an association of states in which the general government is subordinated to regional government. Under this definition, the East African Confederation will be a treaty-based union where the sovereignty of each nation will remain intact. While some scholars including Elazar (1998); Lister (1996) have supported this approach of transiting from a confederation to political federation in the EAC because confederations are applicable where there are great disparities between the ethnic groups in terms of population, territory and economic power and their people wish to preserve them, but at the same time see the advantage of long term or permanent links with other states and peoples. Others like Goldstein (2001) citing the example of 19th Century Switzerland, have , indicated that the transition from a confederal to a federal order

may take a very long period of time and may have to be precipitated by a phase of conflict to be finally accomplished. Zimmer (2003) further stated that turning to a federal state from confederal state would imply the explicit voluntary renunciation of sovereignty by the states, going beyond the arrangement of 'pooled' sovereignty. This appears highly unlikely for the foreseeable future. It was based on these opposing views that the researcher sought to analyze the decision to adopt Political confederation as a new road map for achieving the proposed political federation; why was this decision made? How was it arrived at and what are the chances that it shall lead the region closer to a political federation

1.3 Literature review

Theoretical Framework

Theories explain the establishment and development of regional International organizations. Key questions however are why and under which conditions states should decide to transfer political authority to regional organizations, how regional organizations expand their tasks, competencies, and members, and what impact they have on states and societies in their regions. Moravcsik, 1998), argues that the main (families of) theories explaining the development of integration rather than decision making and policy-making are intergovernmentalism and Neofunctionalism. The key debates in regional integration theory have taken place between variants of intergovernmentalist and neofunctionalist integration theories.

This study will be grounded on three theories of regional integration.

Intergovernmentalism

Intergovernmentalism assumes national governments to be the key actors in regional integration. Governments use regional integration to maximize their national security and economic interests in the context of regional interdependence (Moravcsik, 1998). Integration outcomes result from intergovernmental bargaining and reflect the regional preference and power constellations. Governments delegate authority to regional organizations to secure their bargaining outcomes but remain in control of regional organizations and the integration process (Moravcsik, 1998: 38). In emphasizing the central role of governments, state sovereignty and national identity, intergovernmentalism brings out core assumptions of International realism to regional integration theories. In the region's internal relations, it serves to tame regional would be hegemony by binding them to supranational decision-making processes. This is the core of Grieco's 'voice-opportunity' thesis (Grieco, 1996). The autonomy effects of integration not only vary between large and small states but also between policies. In this respect, realist intergovernmentalism distinguishes "low politics" and "high politics" and expects states to be willing to integrate in low-politics areas but to resist pooling and delegation in high-politics areas (Hoffmann, 1966). Low-politics areas do not reduce the autonomy of the state in a major way, either because they do not affect core state powers or because states have limited autonomy to begin with (as in the case of liberal states in the market economy).

Functionalist Theory

Functionalism is a theory of international organization which was formulated by Mitrany. It proposes the organization of national and international life along functional lines. According to Effevottu (2016) this means that individuals with common needs come together to perform the tasks that will help satisfy those needs. Thus, functionalism sees groups and individuals as the focus of international organization. Consequently Effevottu (2016) explains that this road to

regional integration in the EAC does not require member states to part with an iota of their autonomy. It merely entails and encourages inter-governmental cooperation. Functionalism sees the emergence of functional organizations in the EAC whose geographical extension and competence are determined by the task that are to be performed. This means that the area covered by an organization could be contained within or extends beyond the boundaries of a country. If optimality is to be achieved, then flexibility would have to be the key in forming such organizations.

This also means that projects undertaken within the framework of such an organization need not involve all the members at all times. The functionalist idea of integration in East Africa with its emphasis on a defined geographical area is an inappropriate structure for the solving of problems. In a region like East Africa where states are solidifying their boundaries, Zormelo (1994) observes that governments are unlikely to allow an undercurrent of organizations to undermine their authority by demonstrating that they are not as competent as they should be, assuming that such organizations will indeed be more efficient.

Also, political considerations will have two effects if functionalism were to form the theoretical underpinning for regional organization in East Africa. The desire to build the nation will make it difficult for functional organizations to be acceptable forms of economic and social organization. Thus, Effevottu (2016) argues that even if loyalty to the state is not entrenched and therefore not an impediment to international organization, the fact that East African governments see the state as the organizing unit which must be protected from interference, implies that functional organizations will have difficulty in taking off.

Empirical review

The Swiss confederation, 1815-1847

The Swiss Confederation, 1815–47 was a union of 21 small sovereign states referred to as cantons coming together under Article 1 of the 1815 Federal Treaty, to ‘defend their freedom and independence from any foreign attack as well as preserving internal order and peace’ (Kolz, 1992–96: 193). Church and Dardanelli (2005) note that the cantons were independent and sovereign states de jure and, to a large extent, de facto although some encroachment on their sovereignty was already visible despite the essentially confederal nature of the system. This same Article 1 revealingly stipulated that cantonal constitutions were adopted by the supreme authority of each canton but also that they had to ‘conform to the principles of the federal treaty.

According to Kolz (1992–96: 194), the institutional structure of the Swiss Confederation was centered on a Diet made up of representatives of each canton. Cantons were on an equal footing with each other, each having one vote regardless of the size of their population or their contribution to the confederal treasury. Cantonal representatives to the Diet were delegates of their respective cantonal governments and voted upon the latter’s instructions. The Diet normally met annually, in July, in the capital of the so called ‘managing canton’ (Vorort) whose own chief magistrate would be in the chair. When the Diet was not sitting, the general administration of the Confederation was entrusted, on a rotating biennial basis, to one of the ‘managing cantons’, whether Zurich, Berne or Lucerne. The managing canton would also host the skeletal confederal administration, the confederal chancellery, appointed by the Diet. The Diet normally voted on the basis of a simple majority, with the exception of very important decisions such as military matters for which a three-quarters ‘qualified majority’ was required.

Church and Dardanelli (2005) say that in the tradition of previous confederations, the confederation was also primarily concerned with defence and security, both external and internal. At the heart of the Confederation was a mutual-defence guarantee set out in Article 4 of the Federal Treaty. As there was no standing confederal army, the defence of the confederation was provided by the cantonal contingents directed in time of war by a confederal commander as general. Church and Dardanelli (2005), further argue that the Confederation was also concerned with economic matters. It notably had the significant responsibilities of conducting external trade policy and signing commercial treaties. The Confederation also set a common external tariff that was collected by the border cantons and paid into the confederal treasury annually. This external revenue was the only independent source of income for the Confederation, which had for the rest to rely on cantonal contributions, although a ‘national’ debt accruing to the Confederation was recognized.

Aubert cited by Church and Dardanelli (2005) also wrote that the constitutional framework of the Confederation placed significant constraints on the autonomy, if not the sovereignty, of the cantons. In addition to the constitutional ‘compatibility clause’ already mentioned, the Treaty also prevented cantons from concluding alliances with each other or agreements with foreign states that were deemed to be in conflict with its norms or were detrimental to the rights of the other cantons. On the other hand, despite the emphasis on equality symbolized by the elevation of all territories to a cantonal status as declared in Art. 7, there were no provisions for confederal citizenship, with the result that citizens had rights only within their own canton and were considered ‘foreigners’ in all other cantons. Moreover, if the balance of power between the central level and the cantons might appear to have been rather unfavorable to the latter for a confederal order, the lack of enforcement power on the part of the central level meant that the cantons often ignored the Diet’s decisions (Aubert, 1974: 18).

Switzerland is an extremely interesting example of a confederal system in both its historical and contemporary dimensions. Church and Dardanelli (2005) conclude that it can be seen as the near perfect embodiment of the federal idea. But it is also a peculiar and idiosyncratic political system, in which formal institutions and cultural patterns are closely intertwined. As such it is a fascinating political system to study but also a very difficult one to imitate.

As Switzerland has experienced a long confederal history and undergone a transition to a federal state, its experience could be of deep relevance for the contemporary debate on the confederation of the EAC. In this study I will outline to what extent the EAC can learn from the Switzerland experience in order to shape the EAC confederation.

The European Union

Analysis of the Swiss political system before and after 1848 compared to that of the EU by Church and Dardanelli (2005) provides strong support for conceptualizing the EU as a confederation. Warleigh (1998) argues that conceptualizing the EU as a confederation opens up the possibility of analyzing the EU in a comparative way, rather than treating it as an entirely unprecedented form of political system. There is one problem, however, all the main historical examples of confederation existed in the distant past; no confederation truly comparable to the EU exists today.

Skillen (2017) posits that while the EU does not fulfill Elazar’s requirements to be a federation, it is clear that it is more than a confederation, being that a confederation is essentially an intergovernmental, consensus-based body. Likewise, Watts (2008) says the EU is designed for

governance over ‘certain limited purposes’, though given the increased role of the European Parliament following the Lisbon Treaty, it is clear that the EU is not composed simply of delegates from constituent governments. Furthermore, the EU does have certain supranational powers, rather than being strictly intergovernmental (Watts, 2008). The European Parliament uses varying forms of majority voting in legislative procedure, and while in practice consensus is the norm in the Council of the European Union, qualified majority voting is an option (Skillen, 2017).

Within the EU, the European Parliament is voted upon directly by citizens. Nugent (2010) writes that under the EU, the Council of the European Union is comprised of Member States’ politicians, so that the Foreign Affairs Council consists of Member States’ foreign ministers. He further notes that the European Council consists of Member States’ Heads of State, which have been directly elected by citizens. Lastly, Commission staffs are composed of civil servants and experts, while the College of Commissioners is nominated by Member States and approved by the elected Parliament.

Executive power is shared between the Commission and European Council, and the former may also propose legislation. Legislative power is shared between the Parliament and Council of the EU (Nugent, 2010). Skillen (2017) concludes that the outcome of this structure is that the two principles are represented within the EU, citizens as in a federation, and Member States as in a confederation and legislative and executive functions are divided across the institutions, detracting from governmental clarity.

Skillen (2017) in analyzing the EU’s ‘Accountability Deficit’ as the Result of Structural Hybridity reveals that powers are distributed within the EU between the EU and its Member States. The EU is exclusively responsible for some items ‘exclusive powers’, other responsibilities are shared between the EU and Member States ‘shared powers’. In other areas, the EU may support or supplement the actions of national governments and there are also areas of strict national competence in which the EU has no culpability. Skillen (2017) further says Powers in the EU are not distributed downwards or strictly on the principle of subsidiarity as is more common in a state government system. In the EU the foreign policy is largely managed at Member State level, with limited initiatives at ‘federal’ EU level.

1.4 Methodology

In this study, I used cross sectional research design using qualitative approach because it enabled me to gather data from a sample of a population at a particular time (Amin, 2005) in order to make inferences about the effect of one or more explanatory variables on an outcome variable. According to McMillan and Schumacher (1993, p. 479) qualitative research is defined as, “primarily an inductive process of organizing data into categories and identifying patterns (relationships) among categories. The Qualitative method enabled me to make observations, interview, and review different document in order to build a holistic, largely narrative, description to inform my understanding of a social or cultural phenomenon (Prashant, 2013).

The study mainly targeted the expert opinion on EAC integration process. These included 32 officials in the Directorate of Social, Political and legal Affairs department and Directorate of Economic, Production & Infrastructure in the Ministry of East Africa Community Affairs, Uganda and Kenya. The population further included scholars from department of Political Science Makerere University Uganda and The Catholic University of Eastern Africa including students of Regional integration at (CUEA), former EAC officials in charge of political department Arusha,

ex officials from the Political federation department , secretariat Arusha and and former youth ambassadors to the EAC from both Uganda and Kenya .The target population was guided by cost and time consideration, and the number expert officials at the two ministries. Sampling enabled me to select elements from the population in such a way that elements selected represent the entire study population (Saunders and Lewis, 2009).

1.5 Discussion of findings

Factors that contributed to the decision for the adoption of the confederation in EAC

The discussion on fast-tracking political union of the East African Community was initiated during the East African Community summit in 2004 (Booth et al., 2007). Since then, there have been major developments and one of them that is most significant towards seeing the EAC federation come to reality is the Wako Committee that was established to spear head the fast tracking process (Nabudere 2016). From its consultations, the committee found two arguments for fast-tracking .The first argument centered on integration being a catalyst of peace, political stability and security. The second argument was that political integration is a catalyst for economic integration but economic development can be faster within a political federation than when It is done under totally separate governments.

The Committee basing on its findings reported that East Africans felt that the political Federation was an idea, whose time had come, recommended the launching of the East African Federation by 1st January 2010 and be achieved by 2013 with the election of a single president for East Africa which did not happen. Following this report by Wako Committee, a National Consultative process was started to establish the level of awareness among different constituencies on key issues of the East African political federation. The national consultation committee was chaired by Njuguna Ngujiiri (Kenya), Besweri Akabway (Uganda) and Samuel Mwita Wangwe (Tanzania) Burundi and Rwanda later on established their own consultation committees led by Julius Bucumi and Anastasi Syaka respectively.

The report by the national consultation committees indicated that all the populations in the five member states were receptive to the idea of establishing a political federation, The findings were as follows; Burundi 71%; Kenya 83% Rwanda 96% and Uganda 87% before fast tracking and on fast tracking the political federation ,the findings were as follows Burundi 63% Kenya 66% Rwanda 91%; Tanzania 24% and Uganda 75%.It can be seen that the fast tracking idea received the lowest support in Tanzania.

In the national consultations report, it clearly emerged that the people of East Africa were united in the quest for federation but the issue was when and how. Some wanted an immediate federation yet others a cautious approach to ensure that a federation resets on a solid and firm foundation. Both parties however were united in their call that federation should be people centered that is ,be bottom up instead of a top down approach.In this way,the ownership of a federation will remain with the people not the politicians who were responsible for the collapse of the first EAC.Fears ,concerns and challenges were reported to have emerged in the consultations. Consequently in 2009, the Summit instituted a Team of Experts to make recommendations on how to address Fears, Concerns and Challenges towards fast tracking of Political Federation (East African Community,

2017; 3)

The reconstituted committee presented its report in October 2011 and inter alia recommended that to address the fears and concerns the following had to be done; The EAC embark on negotiation of a Treaty for the establishment of the monetary union; reform the organs and institutions of the community to effectively manage the deepening of the integration process; particularly the court of justice, The East African legislative Assembly and the EAC secretariat.

The draft EAC Political Federation Model structure was developed by the secretariat with the help of a group of selected regional and senior experts, The model is comprised of a two tier structure for the EAC federal state with the EAC partner states as its constituent states having a Bi –cameral Parliament and federal judiciary .The summit however directed that the proposal be studied further.

The 33rd Meeting of the Council observed that, upon further consultations, all Partner States had generated convergence on Confederation as the model for the East African Federation. The Summit directed the Council of Ministers to come up with a team of Constitutional experts to draft the Constitution for the East African political confederation (Ministry of East African Community Affairs, 2017).

The study revealed that the decision to adopt a political confederation was based on the recognition by EAC member states to address the underlying challenges that have hindered the realization of the political federation that points to the current political discourse, the history of the EAC since its inception in 1968 to the new EAC, disparities in political and economic systems of EAC member states. The study found that the EAC member states deemed it necessary to first address the underlying challenges mentioned in the findings that are a serious barrier to federation. Adopting a confederation therefore would give the EAC member states time to solve some of these serious issues but also participate in this form of cooperation that they believe will eventually lead to the ultimate goal which is the political federation.

The fear of loss of sovereignty by the member states is still a major factor hindering the realization of a political federation therefore a confederation allows for member states to build confidence so that they will give up their sovereignty with no doubts. In as much as East Africans think a “marriage” like one of my respondents called it is a good thing the EAC members are just not yet there .In other words if they are not willing to lose their sovereignty they are far from being ready hence opting for a looser federation hoping that they can build confidence and keep united through a confederation.

The study confirms that the confederation will allow for member states a transitional period to expedite and conclude a protocol on good governance. During the transitional period individual state constitutions can be harmonized to ensure caps on presidential term limits, harmonized electoral cycles and electoral process management.

Research findings reveal that regional disputes among member states stand as a stumbling block to the realization of the East African Political federation. The study found out that while the East African countries strive for political federation, some member states have locked in disputes. These political differences among partner states like the most recent closing of the border crossing between Uganda and Rwanda I therefore conclude that the confederal approach to integration in

the EAC is rather a more attractive and feasible alternative to the many East Africans who would want to see a more integrated EAC considering the reality on the ground.

In a nut shell, a confederation is only a middle ground for the EAC to achieve the ultimate goal of a federation. This decision was informed by the challenges that hindered the realization of a political federation and pointed at member states not being ready yet. There was a need to first address these challenges as they participate in a confederation to prepare them transit to a fully-fledged federation.

Findings on the consequences of the decision for governance in the EAC states

Good governance is an important ingredient for the success of regional integration in East African Community. According to Article 3(3) (a) of the EAC Treaty adherence to universally acceptable principles of good governance, democracy, the rule of law, observance of human rights and social justice, is one of the main criteria for admission into EAC membership. The EAC (2018) reveals that political situation in the EAC region over the last decade has been marked by considerable democratic activity, characterized by the holding of multi-party elections in Kenya (2013); Tanzania (2015); Burundi (2015); and Uganda (2016). Rwanda and Kenya held their most recent elections in August, 2017. Indeed, the democratic environment in the EAC region has progressively improved over the years, with among other significant indicators, the multi-party elections held across the region having increasingly been free, fair and credible.

The EAC has also made considerable efforts to improve peace and security in the region. The region has embraced the AU Agenda 2063 flagship projects ‘Silencing the Guns by 2020: Pre-requisite for realizing a conflict-free Africa by the year 2020’. Furthermore, the EAC Vision 2050 recognizes peace and security as a sine qua non for the envisaged socioeconomic transformation of the region and, thus, states, inter alia, that: “A stable and predictable security environment is a prerequisite to the establishment of an enabling environment necessary for the germination of socioeconomic and political gains targeted by the integration imperatives”. Also noteworthy is that the principle underpinning the EAC political integration includes harmonization and coordination of regional policy frameworks with regard to good governance, democracy, peace, security, defense, human rights and social justice, as well as international relations.

The success of an integration process is premised on an enabling political framework. Accordingly, the EAC Treaty states clearly that the ultimate goal of the EAC is the establishment of a Political Federation. The achievement of a political federation is aimed at advancing socioeconomic and political development, and is also in line with AU aspirations. As a sign of their commitment to democracy and good governance, all the Partner States signed the Protocol on Democracy and Good Governance (2006) of the International Conference on the Great Lakes Region (ICGLR). Good governance practices are linked to the rule of law and enforcement; ethics and anti-corruption; freedom of expression; participation and inclusiveness; as well as social cohesion and protection. The development of regional values and governance ethics to promote social cohesiveness so that the East African people can move into the future as “one people” is an imperative.

The confederal approach to integration in the EAC is rather a more attractive and feasible alternative to the many East Africans who would want to see a more integrated EAC than already it is. Throughout the EAC, East Africans of different cultural, religious and ethnic descents seek

reforms to the present governance in their countries. However, resistance to these reforms has only come from the ruling classes and their cronies and representatives who are bent on maintaining the illegitimate status quo because of their embedded political and economic interests.

As such, I observed that the reasons for advocating for a confederal approach to integration in the EAC include, among others, the unity question which has not been answered. The confederation of the EAC will curtail the cost of governance because each country will be empowered and forced to generate and manage its resources for its own development. Under the proposed confederation, sovereignty will lie with the states, elected officials who continue their kleptomaniac tendencies will have to answer to the people of their states and this will be more effective because such criminals will not enjoy any cover from the central authority. This implies that to some degree the confederation of the EAC will ensure accountability.

This study also reveals that EAC member states under the confederation will maintain sovereignty returns and the confederal authority will only exist at the expense of the individual states and not the other way round. While the federation may have a central authority which may become too powerful and arrogant and unaccountable to the people, the EAC confederation will decentralize power among EAC member states and therefore transfer of responsibility and commensurate authority to constituent units for better administration of the various sovereign polities within the confederation. This implies that to some degree the confederation will ensure proper administration of member states.

While the domestic democratic systems in EU member states are stronger than it is in the EAC, and citizens are able to hold individual representatives or parties accountable by voting them out at the polls like the case in Britain (Skillen,2017), I find the domestic democratic systems in member states in the EAC very questionable. Citing Mwesaba (2010) there have been concerns of rigging of elections and militarization of politics in countries like Uganda and Kenya in 2007. This implies that the hope that the confederation of the EAC will positively influence governance in member states is nothing but void due to the weak democratic systems in some of the EAC member states. The lack of a central authority to enforce protocols on governance means member states may not promote governance in their individual states.

Moreover, when I reviewed the EU policies I found out that for the EAC to form a confederation, the EAC Parliament would have to use varying forms of majority voting in legislative procedure. However, in practice, consensus would be the norm in the Council of the ministers, and qualified majority voting would be an option. Member states have continuously been ranked poorly in governance despite using the principal of majority voting. Unless provision for no collusion between or among member states is provided for in the confederation, the study shows there will be no improvement on governance in EAC where member states most notably Uganda whose parliament uses the vote of the majority without any consensus or regard for governance, constitutionalism and the rule of law. It is evident that this has led to poor governance in the country (Uganda).

A review of Skillen (2017) shows that a confederation in the EAC will simply be a voluntary association of independent states with a common purpose agreed to certain limitations on their freedom of action and establishes some joint machinery of consultation or deliberation. The current

stand in the EAC shows that member states are not yet ready for any interference in their domestic politics. There is evidence of interstate bickering and disputes between member states with little or no deliberation. Even the common market and customs union that have come into play are yet to be fully implemented despite being in place for 14 and 9 years respectively. A confederation in its nature will not have so much impact on governance on EAC member states because it does not provide for an effective executive authority and lacks viable central governance.

This implies that EAC member states will still retain their existing military establishments and further be accorded equal status with a right to secede from the confederation.

Further still, decisions made by the confederal government in a unicameral legislature, a council of the member states, require subsequent implementation by the member states to take to effect. Such decisions are therefore not laws acting directly upon the individual, but instead have more to do with the character of inter-state agreements as in the literature (Madison, James, Hamilton et al., 1987). This implies that the same norm of lack of rule of law, corruption, human rights violations, lack of transparency and accountability will still be the norm in the EAC member states.

Decision-making under the confederation usually proceeds by consensus (unanimity) and not by majority, which makes the confederation a slow and inefficient government (Glencross, 2007). According to the scholar Glencross whose literature I reviewed, states that are “given the need to respect state equality and sovereignty, decisions in a confederation especially over reforming the treaty of union are taken by unanimity this means that all members must agree before the powers or purposes of the union can be altered”. The confederation also provides means through disgruntled member states within the union can secede through a referendum. In regard to governance, this may in some ways be counterproductive as politicians in member states may exploit this provision to reflect their will and not the will of the people. I therefore conclude that such a feature in the EAC confederation will be problematic as it will limit the effectiveness of the union in regards to implementing governance.

1.6 Conclusion and Recommendations.

In this study I discovered that the ultimate aim of the EAC is to establish a regional political integration which will be achieved through a gradual process involving the integration of major economic systems. The Customs Union is operational and the EAC common market has been established. The Monetary Union will be in place by 2023 and, eventually, Political Federation.

Fifteen years after the proposal for fast-tracking the political federation, questions have risen among the elites and East Africans at large about the feasibility of the political federation. The study found that the decision to adopt a political confederation was based on the need by EAC member states to first address the underlying fears and concerns highlighted in the findings.

A confederation if adopted in the EAC may have little impact on governance in the individual EAC member states. This is because a confederation will simply be voluntary associations of independent member states which will not provide for an effective executive authority. The lack of viable central governance will have less impact on issues of governance in the community.

What is more encouraging however is that the people of East Africa find this attempt of great value and strongly believe that the EAC can achieve a political federation through a confederation. As indicated in my study findings, the greatest number of elites that I interviewed commended this attempt by indicating that if the member states are willing to work towards the achievement of the ultimate goal, they should show it by making the confederation work and the starting point would

be to draw a charter of the confederation demarcating the powers and areas that the confederation government would cover. Suspicion being the main challenge facing the formalization of the confederation among partner states, the confederation will certainly face the same challenge however, since all partner states have adopted a common position on confederation, this challenge could easily be overcome. Moreover, the existing organs and semi-autonomous institutions of the EAC would make the formalization of the EAC confederation quite easy. A Confederation government therefore could act as a soft landing /catalyst for the partner states to overcome their fears and move towards a federation.

The EAC has concluded a number of protocols which have deepened the integration process and these include the protocol for cooperation in defense, protocol for cooperation in peace and security, protocol of foreign policy coordination, customs union protocol and common market protocol. However, a lot of time and effort is still required to complete the harmonization of policies, laws and programmes that cover all areas of cooperation. Effort should be put on strengthening and fully operationalizing the customs union, common market and monetary union because these are important pillars of integration on which the confederation will be built. The East African Court of Justice should be empowered to resolve disputes between members of the EAC. The court should also have the capacity to interpret the provisions of the confederation especially the location of power to enable the confederation to work effectively.

It's generally observed that despite an enhanced sense of East African identity arising from modern communications, there are still reservations attributed to lack of awareness among the East Africans regarding the progress made and the benefits of the integration process. This makes the integration vulnerable as it begins to affect issues of mass concern such as jobs and pensions. I therefore strongly recommend that there should be mass sensitization of the population by their respective governments on the progress that has been made and the benefits of the integration.

During the fast tracking process, there was no indication whether the mobilization and sensitization activities were to take place in the rural communities and in what form? Is it the governments or ruling political parties or all the parties that are to conduct such mobilization and 'sensitization'? These questions are important because they will determine the extent to which these consultation processes are to be regarded as legitimate. Therefore, if the people of East Africa are denied the fundamental democratic right to discuss how the political confederation is to be negotiated and make it their own project, such a neglect of the rights of the people will be tantamount to surrendering their sovereignties to the Heads of State eventually. It will place the interests of these leaders above those of the people and give them leeway to manipulate the federation to their advantage.

The Committee should not to repeat the mistakes that were made when the first Community was formed. It is important to understand these historical factors, instead of rushing to expediting and accelerating the process of integration based on the same false premises adopted in 1963-1966 period without going into a deep and clear analysis of why the first East African Community had failed, it would be foolhardy to proceed along the lines proposed. This is based on a number of arguments that point at the EAC not having learnt from what happened in the past.

Placing economic considerations a head of political unity as a basis for an eventual federation will not lead to any success. Looking at the experiences we have had since 1968, at that time, not only

was a federation not formed and the process of constitution making abandoned, two neighboring countries-Tanzania and Uganda went at war in 1978-79. This experience suggests that a decision to federate must not be an economic one but a political decision, which can lead to economic consequences later. I recommend that the different stakeholders in the integration process take into consideration political integration which will eventually come along with economic integration.

The issue of drafting the constitution should be taken seriously. The East African Community has been accused by its people for “copying and pasting” from existing models around the world instead of devising means of creating our own that suits our integration process. Unless the community can stop reading the EAC integration from another lens, especially the EU model of integration, EAC integration will continue on a slow pace. In this context I urge the community and its experts responsible for drafting the constitution to take into consideration the unique attributes of the EAC integration and the community to come up with the valid constitution. This does not mean that they cannot look at the existing models and confederations that existed; they can only do so to be informed

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