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The Treaty for East African Co-operation: Can East Africa Successfully Revive One of Africa's Most Infamous Economic Groupings?

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The developed world has historically viewed Africa as backward and marginal. Recently, however, Africa has found itself in the midst of an emergence and the focus of international attention. The United States has taken an increased interest in Africa, as evidenced by recent visits to the continent by Reverend Jesse Jackson as President Clinton's special envoy, Secretary of State Madeleine Albright, and by President Clinton himself, who was the first American president to visit the African continent in over twenty years. In addition, shortly before President Clinton's trip, the House of Representatives passed the African Growth and Opportunity Bill, which focuses on U.S. trade and investment in Africa.¹ Politicians and multinational corporations are beginning to recognize that African countries have the potential to be significant trading partners in the world market, and they are speaking of Africa "with terms such as 'trade' and 'investment' rather than 'crisis'"² for the first time in decades. In fact, the United States imports more oil today from Africa than from the Middle East,³ and the United States exports more product to Africa than to the entire former Soviet bloc or Eastern Europe.⁴ Moreover, at present, trade with Af-

1. See H.R. 1432, 105th Cong. (1998).

2. Mark Suzman, *A Fresh Start and Fine Sentiments*, FIN. TIMES, Dec. 15, 1997, at 16.

3. See R.W. Apple Jr., *Clinton's Dream for Africa: Many Snags to Overcome*, N.Y. TIMES, April 3, 1998, at A8.

4. See *Africa in the World Economy: Hearings Before the Subcomm. on Africa of the House International Rel. Comm.*, 105th Cong. (1998) (statement of Rosa M. Whitaker, Assistant U.S. Trade Representative for Africa). Critics are quick to point out that these figures may not be as significant as they first appear, for U.S. trade with Africa accounts for only about .9 percent of all U.S. exports and about 2 percent of all U.S. imports. Apple, *supra* note 3, at A8. Additionally, this trade has traditionally been confined to a limited number of countries. See *id.*

rica supports approximately 100,000 American jobs.⁵ Despite all of its promise, however, Africa currently shares in only 1.2 percent of world trade.⁶ Over 260 million people in sub-Saharan Africa live on less than one dollar a day, and many African countries have accumulated billions of dollars of foreign debt.⁷

Perhaps as a result of these discouraging statistics, there is a dearth of information in the international trade literature concerning sub-Saharan Africa. Scholars in this field have instead focused their efforts on more high-profile trade agreements such as the WTO, GATT, NAFTA, and the EU. However, this shortage of scholarly attention is not due to a lack of activity on the part of the countries of sub-Saharan Africa, which have been actively engaging in trade agreements since gaining their independence in the early 1960s.

This Note discusses the potential for success of one such agreement, the Treaty for East African Co-operation. Part I provides the necessary foundation for this discussion by describing the economic conditions in the wider region of sub-Saharan Africa. Part II examines the Treaty for East African Co-operation as it existed in 1967 and reflects on the reasons for its collapse. Part III analyzes the revival of the Treaty for East African Co-operation and explains how it is functioning today. Part IV examines other regional trade agreements in the area and considers the burdens and benefits of concurrent membership. Finally, Part V ponders the future of the Treaty for East African Co-operation. This Note contends that, although the Treaty for East African Co-operation is ambitious, it has the potential to succeed as long as its members are willing to put aside historical differences and quell internal unrest.

I. SUB-SAHARAN AFRICA GENERALLY

The countries of sub-Saharan Africa⁸ have been confronted with consistently poor economic performance over the last

5. See *Africa*, *supra* note 4 (statement of Rosa M. Whitaker).

6. See *African Leaders*, *World Bank Chief Enter Second Day of Meetings*, DEUTSCHE PRESSE-AGENTUR, Jan. 24, 1998.

7. See *id.*

8. Sub-Saharan Africa is composed of all of the countries in Africa except Algeria, Egypt, Morocco, Tunisia, Libya, and South Africa (which has traditionally been excluded for political reasons and is now excluded from this portion of the analysis for economic reasons). See Faezeh Foroutan, *Regional Integration in Sub-Saharan Africa: Past Experience and Future Prospects*, in *NEW DIMENSIONS IN REGIONAL INTEGRATION* 234, 267 n.1 (Jaime DeMelo and Arvind Panagariya eds., 1993).

twenty years. "Sub-Saharan Africa today represents the major global challenge for those concerned about development in the Third World."⁹ The per capita Gross Domestic Product (GDP) for the region fell by fifteen percent between 1977 and 1985.¹⁰ The countries of sub-Saharan Africa are among the poorest in the world, possessing little human and physical capital. In 1992, twenty-four of the thirty-four countries with a per capita income of less than \$400 were located in Africa.¹¹ In 1996, the per capita income was only two-thirds of what it was in the early 1980s.¹² As a result of their economic weaknesses, many countries in sub-Saharan Africa are heavily dependent on the industrialized world for technical and financial resources.¹³

One possible solution to the problems in sub-Saharan Africa may be regional cooperation, which has the potential to improve the economies of all of the countries involved. In 1989, sub-Saharan countries had a combined Gross National Product (GNP) approximately equal to that of Belgium.¹⁴ "Imagine subdividing Belgium into forty-something independent countries, each with its own isolated goods and factor markets, a different public administration, currency, language, fiscal and monetary authorities, army, plus a very inefficient intercountry transportation network. Economists would contend that the welfare of individuals would surely be reduced."¹⁵ Such a duplication of resources is expensive to maintain on many different levels. In monetary terms, paying the administrative costs of the independent resources is much greater than if the services were provided by one centralized government. In addition, a divided region shrinks the tax base that pays for those resources, thus making them more costly for everyone within the region.

A divided region is perhaps most expensive to businesses because transaction costs increase. The businesses are forced to deal with currency conversion, language barriers, and differing legal standards. If instead all services and standards were con-

9. Shalendra D. Sharma, *Africa's Developmental Challenges: Between Despair and Hope*, 20 FLETCHER F. OF WORLD AFF., Winter/Spring 1996, at 165 (reviewing RICHARD SANDBROOK, *THE POLITICS OF AFRICA'S ECONOMIC STAGNATION* (1985) and *THE POLITICS OF AFRICA'S ECONOMIC RECOVERY* (1993)).

10. *See id.*

11. *See id.*

12. *See id.*

13. *See* Ngila Mwase, *Regional Economic Integration and the Unequal Sharing of Benefits: Background to the Disintegration and Collapse of the East African Community*, 8 AFR. REV. 28 (1978).

14. *See* Foroutan, *supra* note 8, at 234.

15. *Id.*

trolled by one centralized government, the costs would decrease for all involved, including foreign and local businesses, state governments, and consumers. Administrative agencies that serve the same function would not have to be maintained merely because they fell on different sides of national boundaries. Not only would there be a larger tax base from which to pay for regional resources, but those within the union could also realize the benefits of economies of scale. Finally, the costs of doing business in the area would greatly decrease because businesses would be forced to deal with only one administration, one set of standards, one currency, and one official language of business.

According to neoliberal trade theory, regional cooperation enables the individual countries to focus on their comparative advantage, which permits them to reap benefits from the division of labor, specialization, and economies of scale.¹⁶ Increased productivity, in turn, stimulates investment.¹⁷ Regional integration progresses in stages: "from free-trade area, to customs union, common market, economic or monetary union, and, finally, to political union."¹⁸ The free market promotes cooperation and integration: each country in the grouping will produce only those goods in which it has a competitive advantage, enabling all goods to be produced by the most economically efficient producer. Thus, all countries in the union will eventually become dependent on each other for the production of certain goods. This interdependence will consequently foster political cooperation. All countries within the union then benefit from the larger market and the more efficient allocation of resources. Moreover, this pooling of resources and exports should increase the region's bargaining power vis-a-vis the rest of the world and decrease its level of external dependence.¹⁹

However, there is some question as to whether purely market-driven theories are appropriate solutions for the problems facing sub-Saharan Africa today.²⁰ For example, the South Afri-

16. See Carol B. Thompson, *African Initiatives for Development: The Practice of Regional Economic Cooperation in Southern Africa*, 46 J. INT'L AFF. 125, 131 (1992).

17. See *id.*

18. *Id.*

19. See T. Ademola Oyejide & Mufutau I. Raheem, *Long-Term Development in Sub-Saharan Africa: Would Regional Integration Help?*, in FROM ADJUSTMENT TO DEVELOPMENT IN AFRICA 367, 369 (Giovanni Andrea Cornia & Gerald K. Helleiner eds., 1994).

20. "This [free market] approach has been gaining momentum with the proposed monetary union of the E.C. It is becoming the singular model pro-

can Development Coordination Conference (SADCC)²¹ rejected the linear development process suggested by neoliberal trade theory. Instead, the SADCC promoted a "development integration" approach to regional cooperation.²² This approach advocates close political cooperation at early stages of the integration process, equity balancing among the member states, and regional industrial planning with regional resource mobilization.²³ The equity balancing requirement ensures that investment and economic growth do not occur exclusively in the most developed country of a region to the detriment of all others.²⁴ Advocates of this approach are skeptical about the ability of a free market to deal with wealth inequalities between states, preferring a more hands-on approach to integration. They also believe that a political federation is a necessary prerequisite to economic integration, rather than an inuring benefit. The main thrust of this theory is that wealth inequalities may be corrected through preferential treatment for less developed countries, redistribution of investments and investment earnings, and tariffs or trade restriction policies.²⁵

Over the past thirty years, the countries of sub-Saharan Africa have been experimenting with different trade theories, and,

posed, no matter how different conditions in Africa of the 1990s are from those of Europe in the 1950s." Thompson, *supra* note 16, at 131.

21. The members of the SADCC included Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, Swaziland, Tanzania, Zambia, and Zimbabwe. The SADCC was "a loose association of states with a quasi-legal personality." Treaty of the Southern African Development Community, August 17, 1992, 32 I.L.M. 116. The goals of the SADCC were to facilitate economic development in the member states, ensure their independence from South Africa, and promote the integrated development of the region. The members of the SADCC formalized their relationship in a Treaty. *See id.* at 117. The SADCC members signed the Treaty of the South African Development Community in 1992. *See id.* at 116. The Treaty created the South African Development Community (SADC), which has replaced the SADCC. *See id.*

22. *Id.* at 117.

23. *See id.* at 124-25.

24. *See* Horacio A. Grigera Naon, *Sovereignty and Regionalism*, 27 LAW & POL'Y INT'L BUS. 1073, 1077-78 (1996). This problem was aptly described by Ngila Mwase:

Common [m]arkets between partner-states with geographical proximity, but differing levels of economic development, not to mention structural and ideological differences, have brought distributional problems of benefits, with the lion's share accruing to the partner able to attract more investments, i.e. with greater economies of scale, both internal and external; better infrastructure both physical and social; a higher level of industrial growth, etc.

Mwase, *supra* note 13, at 28.

25. *See* Naon, *supra* note 24, at 1078.

perhaps as a result of varying regional integration efforts, sub-Saharan Africa has shown signs of improvement. In 1996, African economies experienced growth of five percent, the highest rate in two decades.²⁶

II. THE EAST AFRICAN COMMUNITY

One of the earliest attempts at integration on the African continent occurred in East Africa. The roots of the East African Community (EAC) have been traced as far back as 1902, when an administrative organization was established to foster British interests in Tanganyika and the Zanzibar Protectorate (now Tanzania), the Uganda Protectorate, and the Colony of Kenya.²⁷ The British used this early version of the EAC to regulate trade, transportation, and communication within Kenya.²⁸ In 1948, the British colonial administration created the East African High Commission (EAHC) to serve largely the same ends.²⁹ These early common market structures enabled Great Britain to easily exploit the colonies.³⁰ The colonial administration gave Kenya a position of predominance, and most of the major industries in East Africa were located in Nairobi.³¹ This led to uneven levels of development not only in the industrial sector, but in the service and trade sectors as well.³² Thus Kenya became the "center of the Periphery" in East Africa, while the economic structures of Kenya, Uganda, and Tanzania became intertwined and interdependent.³³

In the post-colonial era, the close ties between Kenya, Uganda, and Tanzania remained intact because the countries' leaders realized that losing the common market structures that

26. See Tony Hawkins, *Can African Economies Sustain Their Recovery?: The World's Poorest Continent Must Attract Global Capital to Maintain Economic Growth*, FIN. TIMES, May 14, 1997, at 9. This growth trend is likely to taper off in the following year with a slowdown in the dollar price of oil and unfavorable weather conditions in Southern and Eastern Africa. See *id.*

27. See Aggrey Awori, *Seeking Regional Economic Cooperation in Africa*, 46 J. INT'L AFF. 119, 120 (1992).

28. See *id.*

29. See *Cooperation Treaty*, 30 AFR. RES. BULL.: ECON., FIN. & TECHNICAL SERIES, No. 11, Nov. 16 - Dec. 15, 1993, at 11484.

30. See P. Godfrey Okoth, *The Foreign Policy of Uganda Since Independence Toward Kenya & Tanzania*, in POLITICS AND ADMINISTRATION IN EAST AFRICA 359, 361 (Walter O. Oyugi ed., 1994).

31. See *id.*

32. See Korwa G. Adar & Mutahi Ngunyi, *The Politics of Integration in East Africa Since Independence*, in POLITICS AND ADMINISTRATION IN EAST AFRICA 395, 412 (Walter O. Oyugi ed., 1994).

33. Okoth, *supra* note 30, at 361.

had been built during the colonial period would be costly.³⁴ In 1967, the three countries entered into a treaty formally establishing the East African Community (EAC).³⁵ Although the main focus of the Treaty was economic, it went further than all previous agreements in the area by undertaking to integrate the politics, as well as the common services, of the member countries.³⁶

The stated goal of the Treaty for East African Co-operation was regional integration, and Kenya, Uganda, and Tanzania all publicly espoused the notion that they entered the Treaty for mutual gain. However, in truth, Kenya, Uganda, and Tanzania were all seeking to protect their own varying national interests. While administered by Great Britain, the Kenyan economy had become dependent on foreign capital.³⁷ Therefore, after independence, in order to maintain its prominence within the region, Kenya needed to retain export outlets for its goods and services.³⁸ Tanzania, which viewed itself as a net loser under the previous trading scheme, sought to achieve a more balanced division of the gains from trade within the region.³⁹ Tanzania also had an ideological commitment to African unity⁴⁰ and saw the EAC as a stepping stone toward Pan-Africanism.⁴¹ Finally, Uganda supported the EAC because it wanted to formalize its relationship with Kenya.⁴² Due to its landlocked position, Uganda was dependent on Kenyan ports, and Uganda wanted freer access to the Kenyan market for its agricultural products.⁴³ In addition, Uganda, like Tanzania, wanted to improve

34. See Reginald Herbold Green, *The East African Community: A Valediction Forbidding Mourning*, 8 AFR. REV. 1, 3 (1978).

35. See Treaty for East African Co-operation, June 6, 1967, 6 I.L.M. 932.

36. See *Cooperation Treaty*, *supra* note 29, at 11484. The Preamble of the Treaty for East African Co-operation states that in "their desire for the wider unity of Africa [the three countries] are resolved to co-operate with one another and with other African countries in the economic, political and cultural fields." Treaty for East African Co-operation, *supra* note 35, 6 I.L.M. at 938. However, despite this broad policy statement, the leaders of Kenya, Uganda, and Tanzania could not reach an agreement on political federation, and nothing further was discussed in the Treaty about how the three countries planned to integrate their politics beyond the proposed economic cooperation. See Adar & Ngunyi, *supra* note 32, at 401. Therefore, the Treaty for East African Co-operation really focuses on economic integration. See *id.*

37. See Okoth, *supra* note 30, at 364.

38. See Green, *supra* note 34, at 3.

39. See *id.*

40. See Okoth, *supra* note 30, at 364.

41. See Green, *supra* note 34, at 3.

42. See *id.*

43. See *id.*

its overall position within the region and achieve more equality in the distribution of benefits from trade and industry within the region.⁴⁴

A. THE STRUCTURE OF THE TREATY

The main objective of the Treaty for East African Co-operation was the establishment of an East African Common Market. It provided for a common external customs tariff,⁴⁵ and it limited the ability of member states to enter into trade agreements that would give them tariff concessions not available to the other members.⁴⁶ Within the union, the Treaty prohibited internal tariffs⁴⁷ and quantitative restrictions on East African goods.⁴⁸ The Treaty also provided that once a customs duty had been charged on a foreign good by any member state, no further customs duties could be imposed on the transfer of that good to another member state.⁴⁹ The Treaty stated that those goods would enjoy unrestricted freedom of transit throughout the territory.⁵⁰

In order to facilitate the success of an East African Common Market, the Treaty for East African Co-operation sought to bring Kenya, Uganda, and Tanzania to the same level of development.⁵¹ To serve this end, the Treaty institutionalized a system of unequal sharing of benefits.⁵² This system had four main components:

- (a) a system of transfer taxes on manufactured goods entering interstate trade imposable by a partner state sustaining a deficit in its trade with the other partner-states,
- (b) the East African Development Bank (EADB) with its differential investment formula (22 ½ per cent of the funds to be invested in Kenya and 38 ¾ per cent in each of the other two partner states),
- (c) the "decentralization" of the Community institutions hitherto concentrated in Nairobi, [and]
- (d) harmonization of fiscal and monetary incentives.⁵³

44. See Okoth, *supra* note 30, at 365.

45. See Treaty for East African Co-operation, *supra* note 35, art. 5, 6 I.L.M. at 941.

46. See *id.* art. 7, 6 I.L.M. at 941.

47. See *id.* art. 11, 6 I.L.M. at 944.

48. See *id.* art. 12, 6 I.L.M. at 945.

49. See *id.* art. 9, 6 I.L.M. at 942-43.

50. See *id.*

51. See Mwase, *supra* note 13, at 31.

52. See *id.*

53. *Id.*

1. *The transfer tax*

The system of transfer taxes⁵⁴ was one of the main provisions of the Treaty intended to help cure the unequal levels of development among the three countries. It allowed a less developed partner state with a trade deficit in manufactured goods within the union to impose a transfer tax on manufactured goods that originated from one of the other partner states.⁵⁵ The value of the tax imposed on the manufactured goods was not to exceed the amount of the trade deficit in manufactured goods between the shipping state and the receiving state.⁵⁶ However, the transfer tax could only be applied when the receiving state produced, or intended and had the capacity to produce within three months, the same or functionally similar goods.⁵⁷ The main goal of the transfer tax was to protect, for a period not to exceed fifteen years, local industry in Uganda and Tanzania.⁵⁸ The theory behind the tax was that it would encourage industrial development in Uganda and Tanzania by making imports into those protected markets more expensive.⁵⁹ The limited period of protection was thus intended to aid industry in Uganda and Tanzania in reaching Kenya's level of development. They could protect certain industries for a period of time while the industries grew and established themselves. Then, when the protective barriers were removed, the industries in Uganda and Tanzania would be able to compete on an even footing with Kenyan industry.

2. *The East African Development Bank*

The East African Development Bank's (EADB)⁶⁰ main purpose was to provide financial and technical assistance to the

54. See Treaty for East African Co-operation, *supra* note 35, art. 20, 6 I.L.M. at 949.

55. See *id.* art. 20 subd. 3, 6 I.L.M. at 950.

56. See *id.* art. 20 subd. 4, 6 I.L.M. at 950.

57. See *id.* art. 20 subds. 6-7, 6 I.L.M. at 950-51.

58. See Mwase, *supra* note 13, at 38. Under the Treaty, Kenya was not afforded the right to impose a transfer tax on goods coming from Tanzania or Uganda. To be afforded the right to impose a transfer tax, the partner state was required to have a trade deficit in manufactured goods with the other two states, and Kenya always had a large trade surplus. See *id.*

59. See *id.*

60. Article 21 of the Treaty for East African Co-operation established the East African Development Bank, and Article 22 provided that the charter of the bank would be set out in Annex VI. Treaty for East African Co-operation, *supra* note 35, arts. 21-22, 6 I.L.M. at 956.

member states in order to promote development.⁶¹ Moreover, the EADB sought to equalize the level of industrialization between Kenya, Uganda, and Tanzania⁶² and make their economies more complementary in the industrial field.⁶³ To further this end, the Treaty for East African Co-operation included a provision requiring the EADB to invest 38 $\frac{3}{4}$ % of its money in both Uganda and Tanzania and the remaining 22 $\frac{1}{2}$ % in Kenya.⁶⁴

3. *Decentralization*

The Treaty for East African Co-operation contained provisions relating to the decentralization of Community corporations and provided for several common services to be administered by the Community.⁶⁵ Treaty members argued that moving some of the Community's institutional headquarters out of Nairobi would aid in achieving an equitable distribution of gains.⁶⁶ Thus the Treaty directed that the headquarters of the East African Railways and East African Airways corporations would be located in Kenya,⁶⁷ while the East African Harbors corporation, as well as the headquarters of the EAC, were to be located in Tanzania.⁶⁸ Finally, the East African Telecommunications corporation and the East African Development Bank were to be located in Uganda.⁶⁹ In addition to the major corporations, there was to be an East African Customs and Excise department, an East African Income Tax Department, a Directorate of Civil Aviation, and an East African Meteorological Department.⁷⁰

4. *Fiscal and monetary policies*

Finally, the Treaty contained provisions intended to harmonize the fiscal and monetary policies of the member states. It stated that Kenya, Uganda, and Tanzania were required to use

61. *See id.* Annex VI, art. 1(1)(a), 6 I.L.M. at 1003.

62. *See id.* Annex VI, art. 1(1)(b)&(c), 6 I.L.M. at 1003.

63. *See* Mwase, *supra* note 13, at 36.

64. *See* Treaty for East African Co-operation, *supra* note 35, Annex VI, art. 13(c), 6 I.L.M. at 1010.

65. Article 86 of the Treaty states that the Community's aim is to decentralize the functions of the community in accordance with the measures set forth in Annex XIV. *See id.* at art. 86, 6 I.L.M. at 988.

66. *See* Adar & Ngunyi, *supra* note 32, at 402.

67. *See* Treaty for East African Co-operation, *supra* note 35, art. 87, 6 I.L.M. at 988.

68. *See id.*

69. *See id.*

70. *See id.* Annex XIV, Part A, 6 I.L.M. at 1054-55.

their best efforts to adopt a common scheme of fiscal incentives towards industrial development.⁷¹ Additionally, the Treaty required the three countries to strive to conform their fiscal policies and pursue economic policies designed to equalize their balance of payments and maintain confidence in their currencies.⁷² These measures were intended to help place Kenya, Uganda, and Tanzania on secure economic footing and make transactions between them easier and thus more numerous.

B. ECONOMIC PROBLEMS WITH THE TREATY

Notwithstanding the comprehensive nature of the Treaty, several weaknesses soon became apparent:

- (a) The Treaty did not guarantee the free movement of labour among the partner states; thus making it more of a Customs Union than a Common Market,
- (b) The transfer tax as an internal levy represented a selective deviation from internal free trade and therefore violated the Common Market ideal of absence of internal trade restrictions,
- (c) Despite the transfer tax and the EADB, the Treaty did not provide for any central means of industrial allocation or a common scheme of fiscal incentives, . . . [and]
- (f) The coordination of some vital matters of the Community were left to the Councils, often without specific guidelines.⁷³

However, perhaps the biggest failing of the EAC was that the attempts at decentralization "did not significantly change the old pattern of sharing benefits,"⁷⁴ with Kenya receiving more than it contributed.⁷⁵ The Community headquarters were formally spread out, but Kenya remained the center for many of the Community's functions.⁷⁶ Because Kenya had the most developed infrastructure and an established business community, as well as a central location relative to the other two states, it continually received the largest share of the expenditures made by the common services and benefited from the employment pro-

71. *See id.* art. 19, 6 I.L.M. at 949.

72. *See id.* art. 27, 6 I.L.M. at 958.

73. Mwase, *supra* note 13, at 31.

74. *Id.* at 32.

75. *See id.* at 46.

76. *See id.* at 32. For example, the headquarters of East African Telecommunications was located in Kampala, Uganda, yet the "nerve center" of the organization remained in Nairobi. *See id.* The East African Harbors Corporation was located in Dar es Salaam, Tanzania; however, the port of Mombassa, Kenya continued to handle about twice as many ships as Dar es Salaam and made improvements to its port with money from the East African Harbors Corporation. *See id.*

vided by them.⁷⁷ Therefore Kenya maintained its position of predominance in the region and continued to control trade within the EAC.⁷⁸ Between 1969 and 1978, Kenya controlled 76.6 percent of the intra-EAC exports; this made Kenya the only net exporter in the region.⁷⁹ During the same period, approximately 81 percent of Uganda's total intra-EAC trade consisted of imports from Kenya.⁸⁰

Another problem for the struggling EAC emerged in the administration of the common services. All corporations were intended to be East African property wherever they were located, but in practice they never were.⁸¹ Some of the Community corporations sustained heavy losses and required support by the state in which they were headquartered.⁸² This contributed to the desire of each state to run its own affairs.⁸³ Moreover, the EAC failed to regulate effectively the transport system.⁸⁴ Disputes arose between the three nations over an increased use of road transportation by Kenya. Tanzania and Uganda felt that the increased road transportation in Kenya would exclusively benefit Kenyan industries to the detriment of the jointly owned public railway system.⁸⁵ Tanzanian officials were also upset about a new trade route that had developed between Kenya and Zambia, causing heavy trucks to continually cross Tanzania.⁸⁶ Tanzania paid the price to maintain the roads, while Kenya reaped all of the benefits from the trade.⁸⁷ This dispute actually led Tanzania to close its border to Kenya's heavy vehicles before the general border closure in 1977.⁸⁸

C. A POLITICAL IMPOSSIBILITY?

Some of the greatest weaknesses of the EAC were political. The Treaty for East African Co-operation created the East Afri-

77. See Arthur Hazlewood, *The End of the East African Community: What are the Lessons for Regional Integration Schemes?*, in *THE FUTURE OF REGIONALISM IN AFRICA* 172, 177 (Ralph I. Onwuka & Amandu Sesay eds., 1985).

78. For a detailed description of trade flows within the EAC, see Adar & Ngunyi, *supra* note 32, at 403-09.

79. See *id.* at 404.

80. See *id.*

81. See Mwase, *supra* note 13, at 32.

82. See Okoth, *supra* note 30, at 372.

83. See *id.*

84. See Mwase, *supra* note 13, at 42.

85. See Hazlewood, *supra* note 77, at 179.

86. See *id.*

87. See *id.*

88. See *id.*

can Authority (the Authority) to perform the executive functions of the Community.⁸⁹ The Authority was composed of the presidents of Kenya, Uganda, and Tanzania,⁹⁰ and the ultimate control of the EAC was vested in the Authority.⁹¹ No proposal could be passed if one of the three heads of state objected to it.⁹² Each of the presidents had an effective veto power over the actions of the Authority, so “[t]he success of the system was . . . dependent on the harmonious relationship among the Presidents.”⁹³ However, the Treaty failed to include a conflict resolution mechanism to deal with disputes that would arise between the member states.⁹⁴ As a result, the differing political ideologies of the leaders within the union limited what the EAC could accomplish.

When the Treaty for East African Co-operation was signed in 1967, Kenya believed it followed a nineteenth-century capitalist pattern of development, with some state intervention.⁹⁵ However, Tanzania thought Kenya fostered inegalitarianism at home and exploitation regionally.⁹⁶ In 1967, Tanzania believed it was in transition to socialism, but Kenya and Uganda viewed Tanzania as dangerously leftist.⁹⁷ The political ideology of Uganda was less clear, but it appeared to fall somewhere between Kenya and Tanzania on the political spectrum.⁹⁸ These differences existed when the EAC was formed in 1967, and they continued to grow thereafter, making a political federation impossible.⁹⁹

89. See Treaty for East African Co-operation, *supra* note 35, arts. 46 & 48, 6 I.L.M. at 965-66.

90. See *id.* art. 47, 6 I.L.M. at 965.

91. See Adar & Ngunyi, *supra* note 32, at 402.

92. See Treaty for East African Co-operation, *supra* note 35, Annex XI, 6 I.L.M. at 1036.

93. Adar & Ngunyi, *supra* note 32, at 402.

94. See *id.* at 401.

95. See Green, *supra* note 34, at 19.

96. See *id.*

97. See *id.*

98. See *id.*

99. See *id.* “Kenya’s capitalism became more elitist. . . . Uganda’s decision makers [were] increasingly viewed by Tanzania and Kenya as a band of erratic, technically incompetent, ‘security’ payment collectors. Tanzania - like Kenya - has tended to pursue the trends evident in 1967, thus . . . widening the Kenya/Tanzania divergence of ideology. . . .” *Id.* 19-20.

Despite these weaknesses, many initially viewed the EAC as a success.¹⁰⁰ The EAC was one of the most advanced integration processes of its time:¹⁰¹

Kenya, Uganda, and Tanzania had convertible currencies, unitary services, and common educational and economic policies. . . . The East African Court of Appeals served as the highest court for the three countries. . . . In more than one way, the East African Community exhibited a higher level of integration than even that of the EEC.¹⁰²

Unfortunately, this success did not last long. Between 1968 and 1971, the EAC held several meetings; however, these gatherings ceased in 1971 due to competition and inequities within the union and the Idi Amin coup in Uganda.¹⁰³ Throughout the 1970s, the EAC existed in name only. It was plagued by inefficient resources, a lack of leadership, and political disputes between the three countries.¹⁰⁴ This political unrest actually resulted in Tanzania and Uganda going to war in 1972 and 1979.¹⁰⁵

When the EAC collapsed in 1977, Kenya, Uganda, and Tanzania "lost over sixty years of cooperation and the benefits of economies of scale."¹⁰⁶ The three states were forced to establish independent services and industries which had previously been provided on a regional level.¹⁰⁷ This was done at great expense and with a loss of efficiency.¹⁰⁸ The difficulties faced by the EAC were aptly summarized by Dr. Ngila Mwase, a scholar who has written extensively about the EAC:

The adoption of the Treaty did not remove the differences in attitudes (of mind, to say the least) to socialism and capitalism, to the great so-

100. See Awori, *supra* note 27, at 119.

101. See P. Kenneth Kiplagat, *Legal Status of Integration Treaties and the Enforcement of Treaty Obligations: A Look at the COMESA Process*, 23 DENV. J. INT'L L. & POL'Y 259, 277 (1995).

102. *Id.*

103. See Ngila Mwase, *The African Preferential Trade Area: Towards a Sub-Regional Economic Community in Eastern and Southern Africa*, 19 J. WORLD TRADE L. 622, 623 (1985).

104. See Awori, *supra* note 27, at 120. After 1971, there could be no more meetings between the three leaders because President Julius Nyerere of Tanzania refused to speak to Idi Amin, the militant dictator who usurped power in Uganda. See Michela Wrong, *Interview: the Executive Secretary of the Secretariat of the Commission for East African Co-operation: United by a Common Policy: Ambassador Francis Muthaura Explains How the New Community Will Work*, FIN. TIMES, Nov. 5, 1996 at 6.

105. See *id.*

106. P. Kenneth Kiplagat, *Jurisdictional Uncertainties and Integration Processes in Africa: The Need for Harmony*, 4 TUL. J. INT'L & COMP. L. 43, 49 (1995).

107. See *id.*

108. See *id.*

cialist and capitalist powers, to the non-citizens, to the organization of economic life in the town and countryside, etc. The Treaty offered the possibility of making common economic decisions at E.A.C. levels, an attempt to make different economic systems co-exist without ill-effects, which, as things turned out, was impossible.¹⁰⁹

In April 1977, the EAC collapsed, seemingly for good, under the weight of its own internal stress.¹¹⁰

III. THE EAST AFRICAN COOPERATION: THE EAC REVIVED

It is of little surprise that the EAC is making a comeback in this era of renewed stability in East Africa.¹¹¹ "The countries of East Africa have many things in common and share similar historical experiences that make them natural candidates for integration,"¹¹² and they all have the potential to gain from it. Uganda has a comparative advantage in agriculture and the power sectors but is landlocked.¹¹³ Tanzania is rich in minerals and has energy potential but is poor, and Kenya has well-developed manufacturing and service sectors but is energy deficient.¹¹⁴ In recognition of these factors, Presidents Moi of Kenya, Mwinyi of Tanzania, and Museveni of Uganda signed the initial protocols to revive the Treaty for East African Co-operation in Arusha, Tanzania on November 30, 1993.¹¹⁵ This move revived the defunct East African Community under the new name of East African Cooperation (still known as EAC). In March 1996, a secretariat was created which officially re-established the EAC.¹¹⁶ The role of the Secretariat of the EAC is to

109. Mwase, *supra* note 13, at 48-49.

110. See Mwase, *supra* note 103, at 623.

111. See *id.* The Executive Secretary of the Commission for East African Co-operation, Francis Muthaura, stated:

The ministers who signed the dissolution agreement [for the EAC] wept. It was the worst thing that ever happened to this region and from that day the economies started to decline. Since 1977 there's been a realisation (sic) that renewed co-operation is inevitable. The whole world is forming regional trading blocs. Either we do the same or we sink.

Wrong, *supra* note 104, at VI.

112. Kiplagat, *supra* note 106, at 50.

113. See *Sub-Saharan Africa*, BARCLAY'S ECON. REV., First Quarter 1997, at 29.

114. See *id.* at 29-30.

115. See *Cooperation Treaty*, *supra* note 29, at 11483.

116. See Michael Holman, *Learning from the Past: East Africa's Three Presidents are Preparing Their Countries for Economic Integration*, FIN. TIMES, Nov. 5, 1996, Survey, at 47. The two and a half year delay between the signing of the treaty and the establishment of the secretariat was due to disputes between

carry out the decisions made by the leaders of Kenya, Uganda, and Tanzania under the auspices of the EAC.¹¹⁷ The current agreement is scheduled to be upgraded into a formal treaty in November 1998.¹¹⁸

One of the main objectives of the EAC is to eliminate all internal tariffs by the year 2000.¹¹⁹ In an attempt to reach this goal and foster the success of the revived EAC, Kenya, Uganda, and Tanzania set up a Tri-partite Commission for Cooperation.¹²⁰ The Tri-partite Commission will be responsible for promoting cooperation on political, economic, social, cultural, and security fronts.¹²¹ The Tri-partite Commission is currently examining impediments to interstate trade and looking for ways to bring the three countries closer together.¹²² The establishment of the Tri-partite Commission has paved the way for greater communication and closer relations between the members of the EAC.

During the past two and a half years, the EAC has been very active in its integration efforts. On April 29, 1996, Presidents Moi of Kenya, Mkapa of Tanzania, and Museveni of Uganda introduced a common internal passport to be used by their combined population of approximately eighty million.¹²³ At the same ceremony, the three leaders inaugurated a flag to represent the EAC.¹²⁴ In addition, on March 6, 1997, the three heads of state signed a memorandum of understanding which established a framework for cooperation in the area of capital markets development.¹²⁵

The revived EAC has found success in other areas as well. The three currencies are freely convertible,¹²⁶ the finance minis-

Presidents Moi and Museveni. See *East Africa Tries Again*, FOREIGN REP., No. 2447, May 15, 1997, at 6.

117. See *Secretariat Launched*, 33 AFR. RES. BULL.: ECON., FIN. & TECHNICAL SERIES, No. 3, May 14, 1996, at 12511.

118. See *Draft Treaty Launched to Revive East African Community*, AGENCE FRANCE PRESSE, May 15, 1998.

119. See *East African Countries Work for Closer Integration*, XINHUA NEWS BULL., August 29, 1997.

120. See *id.*

121. See *Cooperation Treaty*, *supra* note 29, at 11483.

122. See *The Test of Practicality*, E. AFR., Sept. 25, 1997.

123. See *East Africa Launches Economic Plan*, ALL AFRICAN PRESS SERVICE, May 6, 1997.

124. See *id.*

125. See *Capital Markets Development*, 34 AFR. RES. BULL.: ECON., FIN. & TECHNICAL SERIES, No. 3, MAY 6, 1997, at 12959.

126. See *Convertible Currencies*, 33 AFR. RES. BULL.: ECON., FIN. & TECHNICAL SERIES, No. 6, Aug. 8, 1996, at 12615.

ters are trying to coordinate their budgets, and they are harmonizing their banking policies and taxation schemes.¹²⁷ The EAC is also in the process of reviving the Court of Appeals of East Africa.¹²⁸ In addition, Kenya, Uganda, and Tanzania reached an agreement on transportation that will improve the condition of the roads and synthesize the laws and practices of the three countries regarding market access and ports of entry.¹²⁹ The EAC is also currently considering an agreement relating to communications systems.¹³⁰ On the social front, the EAC is discussing a common school curriculum for East Africa,¹³¹ a regional woman's organization,¹³² and cooperation in health care,¹³³ including AIDS research.¹³⁴

IV. A BRIEF LOOK AT OTHER REGIONAL INTEGRATION EFFORTS IN EAST AFRICA

The EAC is not the only regional integration effort in sub-Saharan Africa, nor is it the only trade agreement to which Kenya, Uganda, and Tanzania are parties. Following the collapse of the original EAC, the states of Eastern and Southern Africa created many similar regional organizations aimed at integration.¹³⁵ For example, Kenya, Uganda, and Tanzania are all members of the African Economic Community (AEC) and the Common Market for Eastern and Southern Africa (COMESA). However, the resulting diversity of organizations, many with overlapping membership, can create serious legal and jurisdictional problems.¹³⁶

127. See *East Africa Tries Again*, *supra* note 116, at 6.

128. See *EAC Sets to Revive Court of Appeal*, XINHUA NEWS BULL., Oct. 24, 1997.

129. See *E. Africa Reaches Pact on Road Transport*, XINHUA NEWS BULL., Sept. 7, 1997.

130. See *East Africa Tries Again*, *supra* note 116, at 6.

131. See *Single School Curricula Proposed for East Africa*, XINHUA NEWS BULL., Sept. 12, 1997.

132. See *East Africa Plans Regional Women's Organization*, XINHUA NEWS BULL., Oct. 8, 1997.

133. See *East African Coop in Health Urged*, XINHUA NEWS BULL., Sept. 24, 1997.

134. See *East Africa to Coop in Aids Research*, XINHUA NEWS BULL., Sept. 26, 1997.

135. See Kiplagat, *supra* note 106, at 43.

136. See generally *id.* at 44 (describing several regional organizations on the African continent and examining potential jurisdictional problems and their effects on regional economic integration).

A. THE AFRICAN ECONOMIC COMMUNITY

The Organization for African Unity (OAU) and the United Nations Economic Commission for Africa (UNECA) have developed a "grandiose plan to bring the African continent closer to an African Economic Community by the year 2000."¹³⁷ All of the members of the OAU are parties to the Treaty Establishing the African Economic Community,¹³⁸ (AEC Treaty) which came into force June 3, 1991. The stated goals of the Treaty and the African Economic Community are to foster economic, social, and cultural integration on the continent.¹³⁹ Moreover, the Treaty seeks to balance economic development on a continental level.¹⁴⁰ The AEC Treaty purports to accomplish these goals by focusing on the development of economically self-reliant industrial sectors in each member country.¹⁴¹ The Treaty hopes to bring local production up to a point where each country is equally able to engage in trade on a continental level.¹⁴²

Unfortunately, the lofty goals of the AEC are out of reach, judging from the current state of integration on the continent.¹⁴³ This becomes apparent when one considers the current status of the EAC. The EAC consists of only three countries sharing a long history of cooperation and interdependence, but they have been thus far unable to integrate fully and appear unlikely to complete the integration process by the year 2000. It is in this context that the near impossibility of the AEC's goal of creating an African Economic Community by the year 2000 comes into perspective. The difficulties in defining and coordinating the

137. *Id.* at 44.

138. Treaty Establishing the African Economic Community, June 3, 1991, 30 I.L.M. 1241 [hereinafter AEC Treaty]. Signatories to the AEC Treaty include: Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, the Central African Republic, Comoros, Congo, Cote D'Ivoire, Djibouti, Egypt, Ethiopia, Equatorial Guinea, Gabon, Gambia, Ghana, Guinea, Guinea Bissau, Kenya, Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sahrawi, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, Sudan, Swaziland, Tanzania, Tchad, Togo, Tunisia, Uganda, Zaire (Republic of the Congo), and Zimbabwe. *Id.* Preamble, 30 I.L.M. at 1249-50.

139. *See id.* at 1251. *See* Naon, *supra* note 24, at 1127-32 for a more complete discussion of the goals and inter-workings of the AEC Treaty.

140. AEC Treaty, *supra* note 138, Preamble, 30 I.L.M. at 1249-50.

141. *See* Naon, *supra* note 24, at 1127. This development theory is contrary to the neoliberal (free-market) approach traditionally thought by Western economists to be the most effective way toward economic integration. *See supra* notes 16-19 and accompanying text.

142. *See* Naon, *supra* note 24, at 1127.

143. *See* Kiplagat, *supra* note 106, at 44 n.1.

economic and social policies of forty-nine countries are enormous.

However, the AEC should not be so quickly dismissed as a failure. Its vision is inspiring, and it may help to shape and change attitudes toward integration on the continent. The signatories recognized that the Treaty's goals were ambitious, as they provided for a thirty-four year implementation period to take place in six stages.¹⁴⁴ The organization's inability to meet preliminary and arbitrary deadlines should thus not condemn the entire project. Finally, the AEC has a unique decision-making process in which the Assembly of Heads of State and Government¹⁴⁵ and the AEC Council¹⁴⁶ have the authority to "make supranational regional law that is directly and immediately binding on the AEC member countries."¹⁴⁷ This has been viewed "as a significant step toward reducing the sovereign interference in the adoption of community decisions that plagues other African international economic integration programs."¹⁴⁸

144. See AEC Treaty, *supra* note 138, art. 6, 30 I.L.M. at 1254.

145. See *id.* art. 8, 30 I.L.M. at 1256.

The Assembly is the supreme organ of the AEC: it determines and implements general AEC policy, issues directives, and coordinates and harmonizes the economic, scientific, technical, cultural, and social policies of member countries. It also oversees the functioning of AEC's other organs Assembly decisions are adopted by consensus (or, failing that, by the vote of two-thirds of the AEC members) and become automatically enforceable thirty days after they are signed by the Assembly's president. Assembly decisions are binding on both member countries and AEC organs.

Naon, *supra* note 24, at 1129.

146. See AEC Treaty, *supra* note 138, art. 13, 30 I.L.M. at 1258.

The AEC Council is composed of the ministers of the member countries and is responsible for the functioning and development of the community. The Council makes recommendations to the Assembly on any action necessary to attain AEC objectives. It acts by issuing regulations that are binding on member countries, subordinate organs of the AEC, and regional economic communities after having been approved by the Assembly. If the Assembly has delegated its decision-making powers in a given area to the AEC Council, regulations issued by the AEC Council become binding immediately. Regulations are automatically enforceable thirty days after they are signed by the chairman of the Council. Regulations proposed by the [C]ouncil are adopted by consensus (or, failing that, by a two-thirds majority of the member countries).

Naon, *supra* note 24, at 1129-30.

147. *Id.* at 1130.

148. *Id.*

B. THE COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA

In addition to the EAC and AEC, Kenya, Uganda, and Tanzania are all parties to the Treaty Establishing the Common Market for Eastern and Southern Africa.¹⁴⁹ Like the AEC, COMESA was also adopted with lofty goals. However, in May 1997, these great ambitions were scaled down to focus on the creation of a free trade area among the member states by the year 2000¹⁵⁰ and a customs union with a common external tariff by 2004.¹⁵¹ The other overlapping regional organizations within COMESA, such as the EAC and the AEC, should aid in this process. The COMESA Treaty contains a provision requiring that COMESA members provide all other member states "most favored nation" treatment.¹⁵² This provision specifies that COMESA members may not enter into preferential trade agreements with non-member states unless they offer the same concessions to all COMESA members on a reciprocal basis.¹⁵³ Hence, the COMESA process will be aided by other regional groupings. As COMESA members reduce tariffs to comply with other treaty obligations, they are forced under the terms of the COMESA Treaty to offer the same terms to all COMESA members.

However, with just over one year left in which to reach their goals, it is unlikely that the twenty diverse countries involved in COMESA will be able to effectuate a free trade area by the year 2000. Several of the individual countries involved in COMESA have suffered political turmoil and social unrest. In addition, COMESA itself has been plagued by internal friction. The Secretary General of COMESA was suspended in early 1997 for al-

149. See Treaty Establishing the Common Market for Eastern and Southern Africa, Nov. 5, 1993, 33 I.L.M. 1067 [hereinafter COMESA Treaty]. The original parties to the COMESA Treaty included Angola, Burundi, Comoros, Djibouti, Eritrea, Ethiopia, Kenya, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Rwanda, Seychelles, Somalia, Sudan, Swaziland, Tanzania, Uganda, Zambia, and Zimbabwe. *Id.* Preamble, 33 I.L.M. at 1072. Mozambique, Lesotho, and Namibia have since withdrawn from the Treaty. See *Secretary-General Suspension*, 34 AFR. RES. BULL.: ECON., FIN. & TECHNICAL SERIES, No. 1, March 10, 1997, at 12880.

150. See *COMESA Targets African Free Trade Area by Year 2000*, DEUTSCHE PRESSE-AGENTUR, May 13, 1997.

151. See *Executive Secretary Dismissed*, 34 AFR. RES. BULL.: ECON., FIN. & TECHNICAL SERIES, No. 4, June 2, 1997, at 12993.

152. See COMESA Treaty, *supra* note 149, art. 56, 33 I.L.M. at 1084.

153. See *id.* See also *supra* note 21.

legedly mismanaging the organization's funds.¹⁵⁴ Around the same time, Mozambique, Lesotho, and Namibia withdrew from COMESA in order to focus their energies on another regional grouping, the Southern African Development Community.¹⁵⁵

Despite these problems, COMESA members have achieved significant tariff reductions.¹⁵⁶ Total intra-COMESA trade has increased from \$834 million in 1985 to \$2.4 billion in 1995.¹⁵⁷ Once again, the inability of COMESA to meet its arbitrarily set target dates should not be viewed as a failure of great consequence for the goals of the regional trade regime.

C. CONCURRENT MEMBERSHIP

Some may question why Kenya, Uganda, and Tanzania would want to be members of the EAC, AEC, and COMESA concurrently. After all, involvement in multiple organizations can be costly because it leads to the duplication of resources and concomitantly high administrative costs.¹⁵⁸ It also creates uncertainties for businesses, raising the cost of maintaining operations in the area.¹⁵⁹ Businesses are forced to consider the benefits and liabilities involved in doing business in a particular country by looking at its membership in various trade regimes.¹⁶⁰ A "trader will have to identify, among other things, the dispute resolution regime that will apply to the contract, the currency and payment procedure, and the percentage of local value added to the product entitling it to preferential treatment These requirements make trading with [a] region difficult and inefficient."¹⁶¹ Additionally, competing legal standards may make it impossible for a country to comply fully with all of its international obligations.¹⁶²

Moreover, countries face problems of forum-shopping as businesses search out the most favorable judicial climate in

154. See *Secretary-General Suspension*, *supra* note 149, at 12880.

155. See *id.*

156. Zimbabwe, Uganda, Mauritius, Kenya, Sudan, and Comoros have made eighty percent tariff reductions, whereas most other COMESA countries have reduced tariffs between sixty to seventy percent. See *COMESA Targets African Free Trade Area by Year 2000*, *supra* note 150.

157. See *COMESA Calls for Removal of More Barriers to Boost Trade*, XINHUA NEWS BULL., Feb. 2, 1998.

158. See Kiplagat, *supra* note 106, at 50. See also *supra* note 13.

159. See Kiplagat, *supra* note 106, at 51.

160. See *id.*

161. *Id.*

162. See *id.* at 50.

which to litigate their claims.¹⁶³ Each treaty regime generally sets out its own dispute resolution scheme. Therefore, if a country is a member of more than one trade regime with jurisdiction over the dispute, the entity seeking to challenge that country's trade policies can raise its claim in whichever jurisdiction gives it the best chance of prevailing. However, disputes normally may only be adjudicated under the auspices of a regional organization if the dispute arises under the treaty which the entity is seeking to use to enforce its position.¹⁶⁴ For example, one country cannot adjudicate a dispute regarding access to another country's ports under the auspices of a treaty that does not provide for the rights of access sought. Finally, even if a favorable judgment is secured through the dispute resolution scheme of one treaty, that judgment is only enforceable against the members of that treaty.¹⁶⁵ Each treaty regime exists independently of all others, and there are no vertical enforcement mechanisms.¹⁶⁶

Nonetheless, concurrent membership in regional trade agreements does provide some advantages. Integration pools the collective resources of a region and creates larger markets.¹⁶⁷ The costs of doing business in that region are thereby decreased.¹⁶⁸ Decreased costs, in turn, draw investment,¹⁶⁹ strengthening weak individual economies and making them viable as a regional market.¹⁷⁰ This is especially important in the context of sub-Saharan Africa, where most of the individual countries have economies that are too small to draw effectively outside investment or compete in the world market.

However, the larger the trade union, the more competing ideologies to accommodate. The benefits of belonging to smaller regional groupings are apparent: when there is a smaller number of members in a regional grouping, it is easier to come to a consensus on complicated issues such as tariff reductions. Logically, it is possible to make larger tariff reductions more quickly when it is only necessary to get three treaty members to

163. *See id.* at 51.

164. *See id.* at 53.

165. *See id.*

166. *See id.*

167. *See id.* at 56.

168. *See id.*

169. "The attraction to potential investors is that a wider market is generated by integration which in turn lowers marginal input costs by increasing outputs." *Id.*

170. *See id.*

agree rather than twenty or thirty. Therefore, members of smaller trade agreements can share increased benefits from free trade among themselves while they strive to negotiate larger trade agreements.

The members of the EAC have an additional incentive to be a part of COMESA because of South Africa. South Africa is a large, wealthy market with a relatively high standard of living, and EAC members can produce many goods more cheaply than South Africa.¹⁷¹ In addition, the members of the EAC have an advantage over other African countries in trade with South Africa due to what the South Africa Foundation Director, Paul Runge, calls "comfort zones" for South African businessmen.¹⁷² The EAC and South Africa share the English language, maintain similar banking systems, and ship frequently between themselves.¹⁷³ The EAC therefore has the potential to develop a favorable and productive trading partnership with South Africa.

However, the emergence of South Africa may not be all good news for the EAC. Kenyan businessmen have accused South Africa of using unfair trade practices to close off the South African market to Kenyan goods.¹⁷⁴ Additionally, the well-developed South African economy may lead to a flood of South African goods throughout the region which have been expensive or difficult to get.¹⁷⁵ This is both a potential benefit and a potential detriment to the members of the EAC. They will have greater access to goods that were previously out of reach, or produced at a great cost; however, they may face declining terms of trade with South Africa as South African exports increase throughout the region. In either case, the members of the EAC cannot afford to ignore the presence of such a dynamic economic force in the region.

V. THE REVIVED EAC'S POTENTIAL FOR SUCCESS

Kenya, Uganda, and Tanzania have taken steps to try to ensure that history will not repeat itself and that the EAC will prosper as a regional organization. In this endeavor, they have

171. *See id.* at 60.

172. *See* Claire Pickard-Cambridge, *East Africa the Leader in Trade With the South*, BUS. DAY (S. AFR.), Jan. 19, 1998, at 3.

173. *See id.*

174. *See Kenyan Exporters Complain About High South African Tariffs*, XINHUA NEWS BULL., Nov. 17, 1997.

175. *See* Kiplagat, *supra* note 106, at 59. South African exports have greatly increased in Kenya and Tanzania, especially in steel, plastics, paper pulp, and vehicles. *See New Trade Flows*, INDIAN OCEAN REV., March 2, 1996, at 708.

found some initial success.¹⁷⁶ However, the EAC still faces several formidable challenges that must be addressed if it is to be a successful and enduring trade regime.

One of the biggest problems facing the EAC today is the recent behavior of Tanzania where "a listless bureaucracy continues to constrain growth."¹⁷⁷ Tanzania is the poorest of the EAC members, and there is an increasingly prevalent belief amongst Tanzanians that the country is being marginalized and becoming a dumping ground for Kenyan goods.¹⁷⁸ In July 1997, Tanzania suspended all COMESA preferential tariffs, including those on imports from Kenya and Uganda.¹⁷⁹ This angered officials in Kenya who worry that without preferential tax breaks, Kenyan products cannot compete in Tanzania.¹⁸⁰ Kenyan officials also worry that, even if the preferential tariffs are reinstated, it may take a long time for Kenya to regain its competitive advantage in Tanzania.¹⁸¹ Tanzanian officials maintain that this measure is only a means of eradicating abuses and strengthening its tax collection structure.¹⁸² Furthermore, they contend that all future COMESA preferential tariffs will be the result of bilateral agreements between the member country, the individual companies within that country, and the Tanzanian government.¹⁸³ This is not the method by which preferential trade agreements are to be instituted under COMESA or the EAC, where preferential tariffs are created within the context of multilateral negotiations between member countries. Although this move by Tanzania was taken under the guise of COMESA, it has noticeably affected the EAC. It has been viewed as a significant obstacle to the EAC's goal of eliminating all tariff and non-tariff barriers by the year 2000.¹⁸⁴ The recent actions taken by Tanzanian leaders cast doubt on their commitment to integration, for the leaders appear more concerned with self-protection than with regional promotion.

176. See *supra* notes 115-18, 123-34 and accompanying text.

177. Holman, *supra* note 116, at 47.

178. See Michela Wrong, *Mediation Brings Rewards: The Poorest of the Three Countries has a Per Capita Income of Just \$120*, FIN. TIMES, Nov. 5, 1996, Special Section, at 2.

179. See Jackson Okoth, *Kenya Wants Review of Dar's Suspension of COMESA Tariffs*, E. AFR., July 14, 1997.

180. See *id.*

181. See *id.*

182. See *id.*

183. See *id.*

184. See *id.*

Perhaps the greatest obstacle faced by the EAC is the instability that has relentlessly plagued East Africa over the last thirty years. Political stability is a prerequisite to economic growth. Without stability, coherent economic policies cannot be designed and implemented on a national basis, and governments do not have the requisite legitimacy to negotiate meaningful agreements. Kenya, historically the most stable country in the region, is currently dealing with a level of civil unrest rarely seen.¹⁸⁵ This is worrisome to the other members of the EAC because “[s]tability and growth in Kenya are essential to the development of the region.”¹⁸⁶ The Kenyan economy is the largest and most developed in East Africa, and its size and level

185. Citing massive corruption, the IMF suspended its \$215 million aid package to Kenya in June 1997. See Michael Holman, *Kenya Faces ‘Lost Year’ in Growth and Investment: Drought, Flood, and Economic Mismanagement Point to Tough Time in 1998*, FIN. TIMES, Dec. 22, 1997, at 4. This came amidst rashes of election violence during which more than one hundred people died. See *Rift Valley Troubles*, 35 AFR. RES. BULL.: POL., SOC. & CULTURAL SERIES, Mar. 20, 1998, No. 2, at 13015. The presidential elections were finally held on December 29-30, 1997, and President Moi, who has ruled Kenya for the past nineteen years, won the election, but not without controversy. Voting in Kenya takes place largely along ethnic lines, and there were reports of ethnic violence which forced several tribes from their homes at the time of the election, thereby disenfranchising them. See *Close Shave*, 39 AFR. CONFIDENTIAL, No. 1, Jan. 19, 1998, at 4. Kenyan law allows its citizens to vote only in their home district, so the displacement of these tribes enabled key districts to go to Moi. See *id.* There were also problems with voter registration which prevented many Kenyan citizens from exercising their right to vote. See *December Election Date*, 34 AFR. RES. BULL.: POL., SOC. & CULTURAL SERIES, No. 11, Dec. 31, 1997, at 12894. Moreover, there were widespread claims of vote rigging and reports that some polls did not open at all. See *Close Shave*, *supra* at 4.

It must be noted that, even without the fraud and irregularity, Moi would still likely have won the election due to favorable election laws and because the opposition candidates were too ethnically divided for any one of them to have garnered a majority of the votes. See *December Election Date*, *supra* at 12894. Following the elections, the violence that had plagued Kenya over the previous year did not quickly cease. The most notable was the sweeping ethnic violence that occurred in the Rift Valley Province, where the Kalenjin Tribe attempted to “cleanse” the area of the Kikuyu living there.

In addition to the political mayhem, 1998 is projected to be a bleak economic year for Kenya. It is unlikely that Kenya will experience even a 2% growth in GDP in 1998, while the budget deficit is expected to almost double. See Holman, *supra* at 4. Part of the reason for this dim outlook is that Kenya has been struggling to recover from severe flooding caused by the weather phenomenon known as El Niño, which devastated the country’s agricultural sector. In addition, Kenya is still struggling to recover from the loss of tourism it experienced last year when ethnic conflicts swept Mombassa during the height of the tourist season. See *id.*

186. *Hearings Before the Subcomm. on Afr. of the House Comm. on International Aff.*, 105th Cong. 11 (July 30, 1997)(Testimony of U.S. Ambassador William Twaddell).

of industrialization are a big draw for investors. If Kenya is not able to maintain stability and control its political situation, it will hurt the entire region. Investors will stop investing in Kenya and current businesses operating in the country will likely pull out or shut down. Uganda and Tanzania will not benefit from any capital withdrawal from Kenya because they will lose the benefits of having these businesses located within the EAC. It is also unlikely that foreign investors will relocate to Uganda or Tanzania because, without Kenya as a trading partner, their relative economies are too small to draw any substantial investment. Uganda and Tanzania could continue to trade among themselves, but at their current level of development the relative gains would be small. Thus political stability in Kenya is essential, not only to the success of the EAC, but also to the economic welfare of the entire region.

Despite its current peaceful and prosperous appearance, Uganda is another possible area of instability.¹⁸⁷ Since the coup that left Museveni in power in 1986, the international community has been content to let Uganda function as a one-party state.¹⁸⁸ This has enabled Uganda to be more stable and more

187. Uganda is peaceful in relative terms; however, in Northern and Western Uganda, sporadic military conflicts continue. See *Museveni's Backyard: Sweeping Changes in the Region Have Not Ended the Rebellions Against Kampala*, 38 AFR. CONFIDENTIAL, No. 16, Aug. 1, 1997, at 4; T.V. Sathyamurthy, *Uganda's Political System 1962-1990: The Balance Between External and Internal Influences*, in POLITICS AND ADMINISTRATION IN EAST AFRICA 503, 503-04 (Walter O. Oyugi ed., 1994); *Uganda: Rebel Activity*, 34 ARF. RES. BULL.: POL., SOC. & TECHNICAL SERIES, Mar. 24, 1997, at 12588.

188. Uganda is not a de jure one-party state since rival political parties are not themselves banned, but Uganda is functionally a one-party state because when Museveni and the National Resistance Movement (NRM) took power in 1986, they banned all party activities. See Holger Bernt Hansen & Michael Twaddle, *Uganda: The Advent of No-Party Democracy*, in DEMOCRACY AND POLITICAL CHANGE IN SUB-SAHARAN AFRICA 137, 142-43 (John A. Wiseman ed., 1995). This ban on party activities is codified in the 1995 Uganda Constitution, which prohibits all party activities, including opening and operating branch offices, holding delegates' conferences, sponsoring candidates for election, and staging political rallies. See Adonia Ayebare, *Uganda Parties Bill is Ready for Parliament*, E. AFR., Mar. 24, 1998. President Museveni has responded to criticism of this system by stating that, once the constitution-making system allows, the people of Uganda will decide whether or not to return to a multi-party political system. See Hansen, *supra* at 143. However, Museveni believes that Uganda is not yet ready for multi-partyism because the country is still too divided by tribe and religion. See Ayebare, *supra*. According to the Ugandan Constitution, the people of Uganda will be able to vote in the year 2000 on whether or not to have a multi-party democracy. See Hugh Dellios, *In Africa, Seeds of Hope Take Root*, CHI. TRIB., March 22, 1998, at C1. However, even if this vote takes place, it is not likely to be successful because supporters of multi-partyism are not currently allowed to organize to get their message across, and the

prosperous than it has been since gaining independence in 1962.¹⁸⁹ However, Uganda cannot remain a one-party state forever; eventually Uganda will face pressure from the international community to democratize and allow rival political parties to exist.¹⁹⁰ Once this happens, the potential for violence in Uganda will greatly increase, as evidenced by the events in neighboring Kenya over the past seven years. Kenya had been pressured by the international community in 1991 to move from a one-party state to a multi-party democracy.¹⁹¹ Following the repeal of Amendment 2A of the Kenyan Constitution, which legalized one-partyism, a rash of violence erupted in the Rift Val-

government is continually spreading the message that political parties are evil. *See id.* Perhaps in recognition that the referendum is likely to fail, multi-party advocates have been calling for a boycott of the referendum, stating that "political parties represent a fundamental right of association." Ayebare, *supra*.

189. The international community is ever mindful of Uganda's checkered political past and therefore is especially apprehensive to pressure Uganda into a political system that the county may not yet be equipped to handle. *See Delloios, supra* note 188.

The United States has faced a lot of criticism for its current policy toward Uganda, which supports Museveni but places little or no pressure on him to democratize his country. The official United States stance is that, while it still advocates democracy, it recognizes that Uganda is fragile, and the United States is pleased by the peace and stability that Museveni has brought to his nation. *See id.*; James C. McKinley, *Clinton in Africa: The Region; A New Model for Africa: Good Leaders Above All*, N.Y. TIMES, March 25, 1998, at A14. One American official stated that as long as Uganda shows a willingness to keep working toward democracy, America can live with them. *See McKinley, supra* at A14. He said that it was not a double standard, but a different standard based on historical context. *See id.* Critics of this American policy have disagreed and stated that a double standard is exactly what it is. Those critics suggest that the United States and the rest of the international community have continued to support Museveni, not because he is making progress towards democracy, but because he believes in free markets and cooperated with the World Bank in restructuring the Ugandan economy. *See Delloios, supra* note 188, at C1. The critics also point out that on President Clinton's recent visit to Africa, he visited Uganda, not Kenya, despite the fact that Kenya has a much more advanced democracy and is a traditional Western ally. *See McKinley, supra* at A14. They argue that this decision was made on economic grounds because President Moi has done a poor job managing Kenya's economy, which is rampant with corruption. *See id.* These critics are left questioning just how deep America's commitment to democracy really runs. *See id.*

190. While the United States has been complacent and has allowed Museveni to run his country unilaterally with little criticism in the past, it has intimated that this arrangement will not be indefinitely acceptable. *See Delloios, supra* note 188, at C1.

191. In November 1991, the IMF suspended a large portion of Kenya's one billion dollars a year in foreign aid. *See SIMON BAYNHAM, KENYA: PROSPECTS FOR STABILITY 2-3 (1997)*. In order to get the aid reinstated, Kenya moved to a multi-party system of democracy. *See id.*

ley Province that lasted until 1993, during which thousands of people were killed.¹⁹²

Despite this struggle, Kenya continues to function essentially as a one-party state.¹⁹³ Although the repeal of Amendment 2A did allow for multi-party elections, the constitutional amendments that were enacted accomplished little.¹⁹⁴ This tension has not yet been resolved, and the recent violence in Kenya is a direct result of Kenya's struggle to achieve full and fair elections.¹⁹⁵ It is perhaps fortunate for Uganda that the international community has shown little interest in meddling in Uganda's internal politics at the current time.¹⁹⁶

The internal weaknesses inherent in Uganda's current one-party political system present another danger for the country. The system that has developed is heavily dependent on Museveni and his personality.¹⁹⁷ If something were to happen to him, the stability of the nation would be in jeopardy.¹⁹⁸ There would likely be a violent power struggle in Uganda because Museveni is the unifying force in Ugandan politics. His popularity and support cross ethnic lines, and, at the moment, there is no clear successor nor an effective democratic system in place with the order, stability, and legitimacy to replace Museveni peacefully.

The current one-party political system in Uganda is also vulnerable due to the growing desire among the Ugandan populous to participate in party politics. This was particularly evident during the last round of elections in Uganda, when the National Resistance Movement (NRM)¹⁹⁹ began to show signs of weakness. Despite the ban on party activity, multi-partyist Nasser Sebaggala defeated a NRM candidate to become the new

192. See *Rift Valley Troubles*, *supra* note 185, at 13015.

193. See KIVUTHA KIBWANA, *SOWING THE CONSTITUTIONAL SEED IN KENYA*, 139 (1996). "The ghost of section 2A, very much like colonialism, continues to rule us from the grave." *Id.*

194. See Kivutha Kibwana, *One Year After Multi-Party Elections: Whither Patriotism, Democracy and Kenya*, in *IN SEARCH OF FREEDOM AND PROSPERITY: CONSTITUTIONAL REFORM IN EAST AFRICA* 311, 318 (Kivutha Kibwana et al. eds., 1996).

195. See note 185.

196. See *supra* notes 187-90 and accompanying text.

197. See *A Strategic Partner*, *BUSINESS DAY* (S. AFRICA), Jan. 28, 1998, at 11.

198. See *id.*

199. The National Resistance Movement (NRM) is the name of the armed movement that brought Museveni to power in 1986. See Hansen & Twaddle, *supra* note 188, at 142.

Mayor of Kampala, the capital city of Uganda.²⁰⁰ Moreover, in open defiance of the law, opposition groups have recently begun staging meetings and selling party cards.²⁰¹ Indeed, it appears as though the NRM's dominance has begun to wane.

Uganda, whose debt service today exceeds its foreign exchange earnings,²⁰² can ill-afford another civil war. Despite its rapid growth of late,²⁰³ the Ugandan economy is still roughly half of what it was before Idi Amin took control of the country in 1971.²⁰⁴ However, all hope is not yet lost. Uganda has the ability to learn from Kenya's mistakes. Additionally, after thirty years of unrest, most Ugandans are happy to be finally living in peace and enjoying the resulting prosperity. Perhaps in this period of calm, Uganda will be able to create institutions and structures to ensure a smooth transition to multi-partyism. Moreover, President Museveni has many broad regional goals,²⁰⁵ and he is a very different leader than President Moi. It is possible that his motivations are purer and he will not sacrifice what is best for the country in order to maintain power.

The long-term success of the EAC will primarily depend on three factors: regional stability, equitable sharing of benefits among member nations, and ideological unity. As previously discussed, stability is essential for economic growth. If one of the EAC members were to slip into civil war, the legitimate government would likely be too consumed with domestic turmoil to worry about any international or regional obligations that it may have. Domestic production, transportation, and communications would also be disrupted, making business expensive, if not impossible. Kenya is currently the most volatile country in the region. Although mass protests and politically motivated violence have decreased since the elections in December 1997, Kenya still suffers from ethnic violence and civil unrest. More-

200. See James Tumusiime, *Museveni Slams Ministers for Meddling in LC-V Elections*, THE MONITOR, April 22, 1998. In the wake of the election results, President Museveni was quick to point out that Kampala has always been a weak spot for the NRM. See *id.*

201. See Michela Wrong, *Party Spirit Seems to be Returning*, FIN. TIMES, Feb. 24, 1998, at 3.

202. See Sharma, *supra* note 9, at 166.

203. Since 1987, the Ugandan economy has sustained an impressive annual growth rate; it has been growing six percent annually, and it grew over eight percent in the year ending June 1996. See Michael Holman, *Recovery is Continuing Apace: After its Remarkable Revival, Uganda Needs to Expand its Export Base*, FIN. TIMES, Nov. 5, 1996, Special Section, at 3.

204. See Holman, *supra* note 116, at 47.

205. See Dellios, *supra* note 188, at C1.

over, an economically tough year is predicted for Kenya in 1998, and the IMF refuses to reinstate Kenya's \$215 million loan package which it revoked in July 1997 due to mass corruption in the government. The Kenyan people have been energized and mobilized by the events of the past year, and questions remain about how long they will be willing to live in poverty while President Moi's regime continues to mismanage and pilfer from the country.

Uganda also finds itself in a precarious position. While experiencing more stability and economic success than it has since independence, Uganda is not completely free of armed skirmishes. Moreover, Uganda's days as a one-party state under Museveni are numbered. Uganda must find a way to make a peaceful transition to multi-partyism.

Despite the delicate situations in Kenya and Uganda, peace will most likely prevail in the region. Kenya escaped a threat to its stability late in December 1997, when it was able to hold its national elections amid strong pressure from opposition groups and escalating violence. Although admittedly flawed, the elections have been recognized by the international community and have provided Kenya with a ruler for the next five years. Following the 1992 elections, there was a rash of ethnic violence which slowly faded away. The ethnic violence currently plaguing Kenya appears likely to do the same, as it has significantly subsided since the December 1997 elections. As for the situation in Uganda, there is reason to believe that it too will work out peacefully. Uganda will eventually, in one way or another, be forced to democratize. However, after three decades of civil war, it is unlikely that Ugandans will launch headlong into another conflict. In addition, President Museveni currently enjoys widespread popular support that crosses ethnic lines. The armed skirmishes in the north and west of Uganda are primarily due to the instabilities in neighboring Sudan and the Republic of Congo (formally Zaïre), and they are unlikely to engulf the entire country.

The second factor that will be essential to the ultimate success of the EAC is its ability to deal effectively with the unequal sharing of benefits within the union. Kenya continues to dominate intra-EAC trade, and Tanzania remains dissatisfied with its gains from trade. If the Treaty administration is unable to deal with these problems, Tanzania and Uganda would probably not view their membership in the EAC as beneficial, and the Treaty may once again collapse. In an attempt to promote equal

development, the EAC has restructured the ownership of community resources. The 1967 version of the EAC provided for joint ownership of regional enterprises which soon led to disputes among Kenya, Uganda, and Tanzania, as each became possessive of the resources located within its borders.²⁰⁶ Under the revived EAC, there will be no joint ownership of enterprises. Instead, the aim is "to create an enabling environment for business," concentrating on the harmonization of policies, but the key actors will be private.²⁰⁷ Under this system, each country is encouraged to develop and promote the resources located within its own boundaries. This restructuring should not only provide incentives for industry to enter the area, but also for it to disperse throughout the region, as the benefits of doing business solely in Nairobi should dissipate. Eventually, each country will share equally in the benefits of development and industrialization.

Perhaps the most significant factor that will contribute to the success of the revived EAC is ideological unity; the countries in the region are no longer "divided by rival ideologies and different economic policies."²⁰⁸ The governments of Kenya, Uganda, and Tanzania all currently share a market-oriented form of government and similar economic policies.²⁰⁹ In addition, all three countries are in the midst of a move towards privatization and liberalization, which has been essential to the integration process.²¹⁰ This has led to a decrease in foreign exchange controls and a profound improvement in the investment climate.²¹¹

"[T]he most important factor in any economic organization, especially on the African continent, has always been the political element. Without that political will, no economic organization, especially of a regional nature, can survive."²¹² The alignment of political ideologies in the 1990s has fostered a meaningful dialogue between Kenya, Uganda, and Tanzania for the first time since the late 1960s. This has made possible not only the re-establishment of the EAC, but also the developments which have occurred under its auspices.²¹³ However, the re-establish-

206. See Holman, *supra* note 116, at 47; see also *supra* notes 81-83 and accompanying text.

207. Holman, *supra* note 116, at 47.

208. Holman, *supra* note 116, at 47.

209. See *id.*

210. See *Sub-Saharan Africa*, *supra* note 113, at 29.

211. See Holman, *supra* note 116, at 47.

212. Awori, *supra* note 27, at 120.

213. See *supra* notes 115-18 & 123-34 and accompanying text.

ment of the EAC has unfortunately not progressed without turmoil. The first attempts to revive the EAC occurred in November 1993, when the initial protocols were signed, but disputes between Presidents Moi of Kenya and Museveni of Uganda prohibited a secretariat from being established until March 1996.²¹⁴ The EAC exists today primarily due to the will of President Mkapa of Tanzania, who used all of his negotiating skill to get the secretariat in place while working as a diplomat prior to his presidency.²¹⁵ Thus it is important not only that the political ideologies continue to move in the same direction, but also that the three leaders are able to put personal differences aside for the good of the Treaty.

V. CONCLUSION

The EAC is an ambitious integration proposal, but it has the potential to be a great success whether or not it meets its goal of eliminating all internal tariffs by the year 2000. The original version of the Treaty confronted civil war and the political imperatives of trying to accommodate the wishes of a capitalist, a communist, and a militant dictator. The EAC exists today in a very different political climate, as Kenya, Uganda, and Tanzania are all relatively peaceful, sharing a market-oriented form of government and promoting similar economic policies. As a result, a meaningful dialogue has been possible between these three countries for the first time in two decades. This dialogue has led not only to the revival of the EAC but also to the agreements that have been reached under its auspices.

In essence, "[b]y co-operating the three nations could boost their share of world trade. Competing, they may all lose."²¹⁶ The members of the EAC are currently on the right track toward achieving many of their ambitious goals. They will be aided in this endeavor if they view other regional organizations, such as the AEC and COMESA, as allies in their quest, rather than competition. The ultimate success of the EAC will depend heavily on the events of the next ten years. If the Treaty administration is able to deal effectively with the unequal levels of development among the three countries, and the region remains peaceful, the

214. See *East Africa Tries Again*, *supra* note 116, at 6.

215. See *id.*

216. Michela Wrong & Anthony Goldman, *Co-operation not Competition: To Exploit its Potential to the Full, East Africa Needs to be Offered as a Single Destination*, FIN. TIMES, Nov. 5, 1996, at VI.

EAC has the potential to be one of the most advanced, integrated, and successful markets in the world.

